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# Who owns the Land?

## Looking for Law and Power in Reformasi East Kalimantan

Een wetenschappelijke proeve op het gebied van de **Rechtsgeleerdheid**

### **Proefschrift**

ter verkrijging van de graad van doctor aan de Radboud Universiteit Nijmegen op gezag van de rector magnificus prof. dr. S.C.J.J. Kortmann, volgens besluit van het college van decanen in het openbaar te verdedigen op maandag 23 november 2009 om 10.30 uur precies.

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# Who owns the Land?

Looking for Law and Power in Reformasi East Kalimantan

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An academic essay in Law

## Doctoral Thesis

To obtain the degree of doctor from Radboud Universiteit Nijmegen on the authority of the Rector Magnificus prof. dr. S.C.J.J. Kortmann, according to the decision of council of deans to be defended in public on **Monday November, 23** 2009 at 10.30 hours

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‘Truth shall prevail – don’t you know Magna est veritas et . . . . Yes, when it gets a chance. There is a law, no doubt – and likewise a law regulates your luck in the throwing of the dice. It is not Justice the servant of men, but accident, hazard, Fortune – the ally of patient Time – that holds an even and scrupulous balance. Both of us had said the very same thing. Did we both speak the truth – or did one of us – or neither? . . .’

*(Joseph Conrad, Lord Jim)*

‘Vimes, I *know* you must be aware that the symbol is not the thing itself,’ said the Patrician.

*(Terry Pratchett, Thud!)*

One swallow never made a spring  
You can buy a crown - it doesn’t make you king  
Beware the trinkets that we bring

*(New Model Army – Lurhstaap)*





Paser and Nunukan in East Kalimantan





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# Preface and I acknowledgements

Conducting research for this book had a surprising resemblance to one of its main underlying findings; claims to land need authoritative backing, embedding in local circumstances and a sense of social relations to succeed. Doing research is no different in that respect; one needs official backing and local support in order to collect data, but also an understanding of local society in order to make any data interpretation valid. The willingness of local people to patiently explain time and again what goes on, and why, and the warmth of their friendships are essential to the success of any socio-legal research. Throughout the fieldwork conducted for this book I was received cordially and friendly in village communities, government offices, and private homes. People in small villages would allow me to occupy part of their houses with our backpacks and mosquito net, and spare their time to accompany me to fallow fields at remote locations in order to get us to understand their explanations of land management. We shared food, coffee and thoughts there, and I came back with greatly increased knowledge of, and respect for, the ways of life in the mountains of East Kalimantan. In the administrative centres of regional capitals support for the research by civil servants and government officials was both priceless and astounding. Enthusiastic individuals willingly explained the tasks and functioning of their offices and their roles within the government administration at large to me. Again, many took the time to patiently discuss procedures and the finer details of their roles. What astounded me was the enthusiasm and passion that many of them displayed. The idea that *reformasi* and administrative decentralisation had made a difference at the regional level of governance was wholeheartedly confirmed by officials. Pointing out their own roles in the administration, they emphasized their increased popular visibility as well as their newly activated responsibilities of formulating and implementing policy. Various ambitious and energetic officials rose through the ranks during the years in which I conducted my research among them and their, and others, cooperation and assistance have been invaluable. A third group of people moved between these two categories; members of NGOs, community representatives to local government and leaders of indigenous movements maintained a steady connection between the population and the government. The long and intense discussions I had with many of them often lasted well into the night and brought me a wealth of information, ideas and insights. To all these people, those in the mountains, those in the urban offices and those in between, I sincerely express my gratitude.

I started this research in summer 2003, when I was accepted for the position of Ph.D. researcher in the Indonesian-Dutch INDIRA Project. The 'Indonesian-Netherlands Studies of Decentralization of the Indonesian *Rechtsstaat* (Negara Hukum, Rule of Law) and its Impact on Agraria' (INDIRA) was a multidisciplinary, multinational research project in which the Institute of Folk Law of the Radboud University and the Van Vollenhoven Institute of Leiden University cooperated



with –among others- Universitas Andalas in Padang and Universitas Gajah Mada in Yogyakarta, and Universitas Parahyangan, Bandung.<sup>1</sup> The project aimed to gain insight into the effect of administrative decentralisation on access to land in post-Suharto Indonesia, and constituted a large group of Dutch, Indonesian, Australian and American Ph.D. and post-doc researchers who all conducted research on the issue within the spectrum of a socio-legal approach. Working in East Kalimantan, my research was also part of a joined Netherlands – Indonesian biodiversity assessment research project in the Gunung Lumut Mountains of Paser, which was initiated and coordinated by Tropenbos Indonesia –as part of Tropenbos International- and carried out with the assistance of Universitas Mulawarman in Samarinda, the Institute of Environmental Studies and the Van Vollenhoven Institute, both of Leiden University, and the National Herbarium of the Netherlands. In this project scientists from a variety of disciplinary backgrounds –among others anthropologists, biologists and environmental scientists- joined forces to come up with a holistic appraisal of human – nature interaction and its effects on biodiversity in the mountains.<sup>2</sup> My contribution here mainly consisted of an assessment of the rights individuals maintained to hold with regard to land and natural resources, and the relation of those rights to official law. This double affiliation to INDIRA as well as to the Tropenbos project meant for me, as a cultural anthropologist by training, that my notion of ‘land rights’ gained considerably in depth. As will be made clear in especially chapter 2, ‘rights’ to ‘land’ involve far more than what an initial look in the law books and the local cadastral office will reveal. Sentiment, emotions, history and strategies play important roles in deciding what rights are, to what they pertain, and who is going to get them. The book does, I think, reflect the various lines of approach; anthropology and law, as well as the ‘hands-on’ analysis of grassroots level normativity that was an essential part of my Tropenbos research.

The 14 months of field research which I carried out between 2004 and 2007 would not have been possible without the support of the Indonesian Institute of Sciences (*Lembaga Ilmu Pengetahuan Indonesia*) or without the assistance of my local counterpart in East Kalimantan; Universitas Mulawarman in Samarinda. Nor would I have set foot on Indonesian soil without the travel and research grants provided by WOTRO, the Adat Law Foundation, the Treub Foundation, the Leiden University Fund, and Tropenbos International. I thank all of these institutions for their kind assistance.

At home in the Netherlands a strong group of supervisors occupied themselves with my research. Herman Slaats and Karen Portier introduced me into anthropology of law and the intricacies of socio-legal research in general. Not shying away from afternoon-long debates on the nature of *adat*, the role of the state in normativity in Indonesia and similar subjects, their contribution to the shaping of my understanding of law and normativity as subjects of research has been enormous. Frans Hüsken’s tremendous knowledge of political anthropology and social science theories of power were wonderful to partake of, while his solid knowledge of

Indonesia provided exiting insights. Piet-Hein van Kempen’s critical comments and inspiring suggestions ensured a solid engagement of the research with official law, and made me realise the importance of the broader context of international law for my research.

My INDIRA colleagues greatly contributed to the vivacity of my research. The Indonesian team of Djaka Soehendera, Soetandyo Wignjosoebroto, Kurnia Warman, Sandra Moniaga, Myrna Safitri, Tristam Moeliono, Saldi Isra and Takdir Rahmadi were great to work with, and our meetings in the field or in the Netherlands always were a bit of a festive reunion. Thanks especially to Sandra, and her family –Martua, Rugun and Ahimsa- for the several times you had us stay as houseguests. In Leiden, the Van Vollenhoven Institute kindly provided me a position as guest researcher throughout the entire period of the research, which allowed for close contacts and frequent discussion with the Leiden-based INDIRA researchers Gustaaf Reerink, Adriaan Bedner, Jan-Michiel Otto, Daniel Fitzpatrick, Jamie Davidson and Jacqueline Vel. A strong team whose stimulating discussion I hope to continue enjoying in the future as well. The Van Vollenhoven Institute at large provided an inspiring and energizing place to work. Jan van Olden, Kari van Weeren, Marianne Moria, Albert Dekker, Rikardo Simarmata, Sylvia Holverda, Ling Li, Maria Lopes, Benjamin van Rooij, Janine Ubink, and, more recently, Jaap Timmer, provided great academic companionship and, especially on Tuesdays, great table-companions as well.

At Tropenbos Indonesia, I met researchers from a whole diverse range of backgrounds, and I fondly remember the yearly workshops on the various Gunung Lumut projects. The location united us, but whereas I looked at land claims, others would focus on tree seed distribution, avian guilds, deer populations and migrations, or the potential of satellites and pilotless planes for detecting illegal logging. Roderick Zagt, Rene Boot, Hans de Jongh, Gerard Persoon and Jan van der Ploeg were my main Tropenbos colleagues in the Netherlands, and I had a great time working with them. Tropenbos Indonesia was an organisation of an entirely different order. Based in Balikpapan, Tropenbos staff went out of their way to assist me with all sorts of research and non-research activities for which I am very grateful. Of the office staff I want to mention especially Susanti, Iwan, Lusi, Elisabeth, Yushi, Widya, Monang and Ais, although that by no means rules out the rest of the staff. Outside of the office Sariman and Pijar proved to be some of the best rugged-terrain drivers one can possibly ride with. Indrawan Suryadi provided most of the cartography in this book, as well as his friendship and hospitality in Balikpapan and Bandung. Dicky Simorangkir was the director of Tropenbos Indonesia for most of the time of my research, always interested in hearing my adventures in the field and continually seeking ways for Tropenbos and myself to profit of one another’s findings.

At Universitas Mulawarman in Samarinda I greatly enjoyed conversations with Simon Devung, a very thorough fieldworker, and with my Gunung Lumut colleagues Albert Manurung and Bernaulus Saragih. I’m very grateful to Wawan Kustiawan for his efficient administrative actions when bureaucracy required them, and with this thesis out of the way I will really start working on those articles we discussed.

1 See <http://www.law.leiden.edu/organisation/metajuridica/vvi/research/projectoutline/indira.html>

2 See [http://www.cifor.cgiar.org/mla/\\_ref/method/indonesia/lumut.htm](http://www.cifor.cgiar.org/mla/_ref/method/indonesia/lumut.htm)

While writing this book, I worked with much pleasure at the Institute of Sociology of Law of the Radboud University. Especially the group of people with whom I worked together on the Specialised Courts Project, Tetty Havinga, Anita Böcker, Carla Klaassen and Alex Jettinghoff, became good colleagues there and helped me to gain insight into the world of socio-legal research in the Netherlands. At the Institute of Cultural Anthropology I had many stimulating conversations with especially Toon van Meijl, Thomas Widlok, Huub de Jonge and Edwin de Jong. I look forward to the coming years of working there.

Many other researchers and academics contributed to making my research and writing possible, I like to mention Gerben Nooteboom, Greg Acciaioli, Carrol Warren, John McCarthy, Donald Tick, Jay Crain, Clifford Sather, Abdurrachman and Abrar Saleng. Finalising this dissertation has in no small part benefitted from proof-reading by Phil Wainwright and Lee Wilson, whose attention for detail is much appreciated, and from Raoul Postel's work in preparing the manuscript for printing.

Also, there are those to whom I would love to hand a copy of this dissertation but who have passed away before the research was finalised. This book hence is also in remembrance of my INDIRA colleague Djaka Soehendera and of two informants, Pak Lindung from Mului and Pak Yosef from Balikpapan. As the following chapters will show, they were much appreciated as informants and as people.

Finally, there are those closest to me. Friends and family who have seen me go off to Indonesia for months at the time and who have been progressively ignored and neglected as this book neared completion. Nonetheless many of you were undeterred and kept phoning or visiting all the same. Charlotte, Lennart and Arjen; I still have to visit your new house, see your new car or cook you a long-promised birthday dinner. I am looking forward to all of this. Mira, you know what writing a thesis is like and you also know what it is like when that is done. I am looking forward to finding out. Carlien, Jos and Nina, I am sure we will be visiting Limburg more often now, and I might actually refrain from working when there. Mattie, Loek, Jan, He Ke and Bob, thanks for all the patience and support. The next book will be a lot faster, I am sure.

Most thanks are however due to my wife, Judith, who rejoiced with me when I had obtained the position and took part in all aspects of it since. You came with me to Indonesia for all of the fieldwork, the first time without speaking a word of Indonesian, lived under some pretty rough conditions there and immediately decided to join on the second leg as well. We shared a lot of experiences there, good and bad, and came through them –mostly– in one piece. Once back home you had to deal with me endlessly working on the manuscript and developing a rather obsessed mind frame, but luckily you developed the knack of pointing out when it really was better for the laptop to stay home and for me to step away from it. Thanks for all your patience and perseverance, and for letting me write this thing to my own satisfaction. It is finished.



# Introduction 1

## Authority beyond reformasi

Access to land, by which I mean the possibility to control the usage of land and profit from its yields, lies at the core of peoples' lives. As a place to live and to work, to grow crops and from which to extract resources, land provides some of the most essential requirements of human sustenance. Association with land goes a long way. Land provides people with an identity, its possession setting one group apart from another and providing a sense –a place- of belonging. Discourses explain and legitimise groups' claims to land and through these claims sustain normative systems that regulate access to the land. With land being a coveted resource, land claims and their sustaining discourses may be challenged by competitors. Notably in agricultural societies, land-related can deeply impact local circumstances; leaders are replaced by rivals and relations between population groups may improve or sour. Government may overrule the land claims of a local group for the greater good of the nation but, in time, that government's power may wane.

Claiming, obtaining and maintaining control over land is a dynamic process that can have a myriad of shapes, purposes and constellations. Access to land does not necessarily bring ownership as well. Group claims to agricultural land vital in providing daily sustenance, for instance, or individual business bids for the economic wealth inherent to unexploited natural resources are markedly different usages that may well pertain to the same plot of land. Such disputes give rise to a clash of interests and it is then up to those with the authority to regulate land access and provide solutions where conflicts occur, making the support of or –even better- the status of 'authority' essential to a successful claim. What, then, is the source of such authority? How can it be maintained? And what happens when an opportunity to redefine authority presents itself?

In this book these questions are asked looking at the effects of administrative decentralization on land tenure in post-Suharto Indonesia. After over 30 years of centralised repressive government, *reformasi* –reform- took place. From 1999 onwards, a new decentralisation policy bestowed considerable administrative and economic autonomy upon regional government bodies.<sup>1</sup> The central question asked here is whether –and if so, how- decentralization has impacted the normative dimensions of access to land in East Kalimantan's regions. What happened when the decentralization legislation challenged the decades-old New Order authoritarian system of strongly centralised government and unintentionally created a vacuum in the nation's power structure? Relations between the central state and its lower organs had to be redefined and a new balance between them consolidated, as well as relations with non-government power-brokers and other influential factions. The resulting relations and the means and strategies they provide in

<sup>1</sup> The regional (*daerah*) level of government consists of districts (*kabupaten*) and municipalities (*kotamadya*). These are equal in status but different in make-up. Municipalities are mainly urban areas centred upon a major town, whereas most districts are essentially rural in character.

arranging and maintaining access to land in the regions – means that differ greatly depending on education, wealth, social standing, as well as on such local circumstances as ethnic relations, government make-up and popular sentiment – are the subject of this research.

The diverse appearances of authority over land and its interrelations with numerous other aspects of local life make that at the regional level comprises a complex research problem. Based on numerous factors – be it social, economic or political – authority over land cannot be limited to a single function, official, or type of action. It is a sought after capacity that serves to strengthen and emphasize its holder's position in society. Controlling access to land quite literally gives one power over land users' positions in society, but also over their economic welfare and – to a certain extent – over their futures. Administrative decentralisation has limited the influence of the central government in local affairs and numerous local candidates – official and otherwise – have presented themselves for the vacancies 'Jakarta' left. Struggles over authority in local affairs are commonplace throughout the nation's regions and control over access to land is a coveted prize in these. Two main systems of land regulation can be discerned on which most others are based to a greater or lesser degree. First is official law: in this case land law as promulgated by the state and upheld through government policies. Yet land tenure regimes that do not fully correspond with statutory land law are quite common at the local level. Decentralisation allows Indonesia's regional governments to operate as relatively autonomous units within the national administration, thus creating local political arenas in which interest groups that would have little or no clout on the national level can become regional influences. The second source of authority consists of customary or traditional rights to land, commonly known as *adat* rights, demands for recognition of which are part of the political discourse in regions all over Indonesia. *Adat* is the embodiment of the traditions and 'customary law' of Indonesia's various ethnic groups. It is a potential source of land rights that has been largely ignored by the New Order regime, notwithstanding its inclusion in a number of relevant laws. As we shall see, *adat* based land claims not only posed sensitive and complex problems to regional governments, but form a source of conflict in government circles as well. Therefore, this research has two main themes. The first is the functioning and legal context of access to land at regional and grassroots-levels of organization. The second theme is the context in which land rights and access to land are negotiated: the impact of local circumstances on the choice of legal forum and on the development of cases.

The research was conducted in East Kalimantan, a sparsely populated province with an extensive natural resources industry and one of the strongest economies outside of Java. The province has a large indigenous minority population as well as extensive migrant groups. The companies and the population all need land, yet contrary to the situation in Java, Bali, or in many other nations, land is not scarce in East Kalimantan. The province is vast and the population limited, nonetheless land conflicts abound. Since *reformasi*, the province is the scene of extensive rights discourses and political struggles. Land issues frequently feature in these, as well as in agrarian, forestry, and election campaigns. Rights to land are not just disputed

because land is scarce, land disputes have become a strong political tool. In this book the meaning of land disputes and their wider deployment are studied at the regional level in two of the province's districts, Paser and Nunukan, that are introduced more comprehensively later in this chapter.

I'm looking for answers to my research questions in what Spencer (2007:11) called "down in the details of people's everyday lives". It is in the details that the finer essentials can be found and appreciated. Generalization promises fast cuts and clear divisions, which do however flow out and mingle upon closer scrutiny. Not unlike diagnosing medical patients or trying cases in a court of law, the essence of the matter becomes clear in the details. Therefore this chapter commences with a few short accounts of individual cases in which control over land access plays a defining role in the social and/or economic setting of the area. These cases serve as illustrations to the above; they are examples of the diverse appearances of control over land access in a number of different constellations of authority. The question these accounts seek to raise is how these cases came about, and how they relate to different sources of authority. The situations relate to popular local notions of how authority and government should be given shape and include perspectives on 'good' politics as well as careful considerations of the chances of success of these enterprises within the context of the state. The social shape of the nation, its legal framework and the structure of its government underwent drastic changes. Indonesia is attempting to move from an absolute regime to a state based on democratic principles. Its politicians and bureaucrats need to unravel a pervasive system of institutionalised authoritarianism and rebuild the dysfunctional legal system while simultaneously preventing the state's disintegration (Lindsay and Santosa, 2008:21). That this is a delicate task goes without saying. That it brings possibilities for the negotiation of authority – as the cases illustrate – is less obvious yet of vital importance to access to land, which can be obtained in numerous ways.

### 1.1.1 Isolation or autonomy?

#### A new logging firm in Kepala Telake

The first case deals with the way in which villagers construct their authority to regulate access to forests on land which they claim as theirs by *adat* right. Balancing *adat* claims and references to official legislation, the village manages to extract a new profit from existing access and legitimate their own – not officially condoned – exploitation of the forest.

The village of Kepala Telake is located at the end of a winding logging road in the Gunung Lumut Mountains of Paser, the southernmost district of East Kalimantan. Although government officials consider it the most remote and isolated village of the district it has a strong economy and is surprisingly rich. Its wooden houses are sturdily constructed and many have two floors, while nearly all have glass windows, a rarity in the mountains. The glass for these houses was laboriously transported along the logging road: an expensive undertaking. The village collectively



owns a large generator that provides all houses with electricity in the evenings, but many individual families privately own smaller generators which are used during the day as well. The expenses of operating the communal generator are met by the income realized through a village taxation regulation, which the village council promulgated in 2000. This village regulation requires logging companies operating in the forests of Kepala Telake's *adat* land, to pay a fee per cubic metre to the village treasury.

Pak Abbas, the village head, explained to me that the administrative authority which the decentralisation laws invested in the village level of government made it possible for the villagers to benefit from the exploitation of 'their' forests without creating a conflict with other government authorities. "Public servants in Jakarta give out these logging permits without having any idea of local circumstances," he told me, "but once these companies arrive in the village we point out that they have been given permits that relate to our *adat* land. Land to which we hold a right. We then declare our willingness to receive them here, provided they pay the fees as according to official village legislation. No hassle with government authorities, no discussions over the validity of *adat* claims. As yet this has not created problems.



Kepala Telake

Kepala Telake's village government issues logging permits itself as well. Referring to national land law, the villagers feel that they have authority over all forest that stands within the boundaries of their *adat* territory. As yet, large stretches of this forest are not covered by Jakarta-issued concessions, and the village council has agreed to let two local men open up their own logging firms in these areas. These tiny outfits consist of one 'boss' and three or four additional workers. One such a boss, Magus, told me that "the problem is that the Forestry Department in Jakarta refuses to recognise the authority that the decentralisation laws give us, as a village, to manage our forest. We have to take care that we are not confounded when

loggers with permits issued in Jakarta arrive. We have to make sure they follow our village regulation." Magus feels, like Pak Abbas, that this system works well. Kepala Telake's remote location makes it difficult for loggers to call in national authorities, as the loss of time and the costs of mobilizing government or police support are far more substantial than the fees required by the village law.

### Opportunism or a moral debt?

The villagers of Kepala Telake base their claim on two grounds: the decentralisation laws and *adat* rights. In case the one does not work, they can fall back on the other. Opportunistic as this might seem, the villagers have good reason to refrain from putting their full trust in recognition of either the one or the other. The New Order regime – under which many of the villagers came to adulthood or were born – largely followed its own rules rather than national law when it came to managing natural resources. For the villagers of Kepala Telake, the post-New Order situation is one in which they have the opportunity to profit from the yields of 'their' forests, rather than see them exploited by some powerful businessman.

Suharto's New Order maintained its power base through the careful distribution of favours to win and maintain the loyalty of key sections of the administrative and military elite. He allowed them to benefit economically from their loyalty, making the New Order a strong example of Weberian patrimonialism (cf. Crouch, 1979; Webber, 2006:409). With a strong position inside the government, military influence extended into the nation's economy. Numerous senior officers were businessmen on the side or used their government influence and army authority in support of private business projects (see Mietzner, 2003), which in Kalimantan often centred on the exploitation of the forests. The symbiotic relationship between the army and the New Order regime gave the military the position of a major political force. Controlling it, as Suharto did, meant controlling the civil government as well (see Anderson, 1992; Said, 1998; Crouch, 1988). This combined military-civil regime gave rise to a decidedly weak civil society in which the state, in the shape of the New Order regime, successfully depoliticized society (Anderson, 1983). The New Order continuously stressed the need for the nation to adhere to the national ideology of *Pancasila* democracy and emphasized *Pancasila*'s points of stability, harmony and unity more than any other aspect (Morfit, 1981:847), as well as its own role in ensuring these values for society. Yet, as Schwarz (1999:292-295) pointed out, the New Order regime was not democratic in a Western sense, nor did the regime accord to the principles of *Pancasila*. Outwards Indonesia maintained the appearance of a democratic state, but to the Indonesian masses its reign was a thinly cloaked dictatorship.

As Vatikiotis (1998:52) noted, Suharto's power was not so much that of the gun, but rather that of the purse. Suharto was the pinnacle of a hierarchical pyramid of patronage and ensured loyalty by dispensing favours, of which the rights to exploit natural resources in remote regions were much favoured. The villagers of Kepala Telake took this right into their own hands, presenting us with a highly localized example of grassroots *reformasi* and thus showing that the drive for access to land is, first of all, a matter involving the people living on and using the land.

### 1.1.2 Riches of the past: the lands of the sultan

The second case concerns a land claim lodged by a descendant of Paser's former sultan. Following the end of the anti-sultan New Order, the time seems to have come to try and reclaim rights dating back to Indonesia's feudal days. This claim and similar ones made by former large land owners could herald another direction land tenure in Indonesia could take: the rise of a new class of wealthy large landlords.

*Pak Tur is a present day scion of Paser's royal family. In his early fifties, he works as a section head in one of the district government's departments. Pak Tur is an upper middle class man. He has a master's degree, owns two houses in Paser's capital Tanah Grogot, a third in the provincial centre of Balikpapan, and a family car. He has performed the Hajj to Mecca, is a well-known figure in the local mosque and overall respected in Tanah Grogot. For most of his adult life Pak Tur has been attempting to regain land that, he claims, was the private property of his royal ancestor and belongs to him by right of inheritance. Until recently he met with little success, but reformasi and decentralisation have brought about the return to prominence of sultans in Sumatra, the Moluccas, Sulawesi, West Kalimantan and the East Kalimantan district of Kutai Kartanegara, which borders Paser to the north. The positions and influence of these sultans vary, but the stories that reach Paser from Kutai Kartanegara relate that lands, titles, and a palace have been returned to the sultan by the district head and that the sultan's council is often sought in government affairs. Yet Pak Tur is not keen on a prominent ceremonial position aligned to the district government. He only wants recognition of his right to the land. That his ancestor happened to be a sultan is, he states, mainly circumstantial to him. Many Indonesians demand remedying of injustices done to them under the New Order regime, but Pak Tur feels that his own claim is particularly poignant as it dates back over one hundred years to colonial times. Moreover, it is excellently documented. Pak Tur has an extensive collection of old and newer documents that he steadily expanded over the years. As he sees it, a new and sincere government will have little choice but to recognise his claim. Pak Tur has brought his case before Paser's district court and awaits its decision with confidence.*

#### Elite rights

A private right land claim has the advantage that it has a clear base in Indonesia's land law. It allows Pak Tur to ignore suggestive rumours accusing him of being former nobility attempting to reclaim land without a legal ground, and a private land claim leaves out the need for local popular support that an *adat* based claim would require. A sultan is not democratically elected, but can be a symbol of local identity and hence a stabilising factor in turbulent times. As such, Pak Tur's claim could be favoured by the local authorities. Suharto himself has often been likened to a Javanese sultan due to his absolute authority yet implicit, indirect style of gov-

ernment (Loveard, 1999). In that sense, the New Order regime was an autocracy, albeit one in which the population was likened to one big family headed by 'father' Suharto. Gaining influence and power meant gaining Suharto's favour, and Suharto was careful in selecting his confidants. Carefully and strategically distributing and withdrawing his favour, Suharto was nicknamed the New Order's *dalang* (wayang puppeteer) for his ability to play and control the diverse characters of Indonesia's evolving tale.

The father/dalang/sultan's regime proved, as Schwarz (1999:20-21, 59-60) argued, that a patrimonial political structure is not fatal to capitalist development, at least not in the early stages of modernization. However, as the modernization of Indonesia's economy continued, Schwarz expected a stage where "....the patrimonial state will come into conflict with the need for a trustworthy and objective legal system, for a more efficient and government bureaucracy and for a more rational, less personal relationship between the government and business." The notion of Indonesia as one large family with Suharto as its patriarch suffered from a problem many big families have. When the family becomes too large, the emotional bonds of kinship wear thin. The patrimonial pyramid was huge. It included the higher classes and elites throughout the nation. The middle class was divided in groups reinforcing the authoritarian character of the administration and others favouring a more liberal democratic leadership than 'Cendana politics' allowed.<sup>2</sup> A large and expanding working class supported the pyramid, and witnessed the nation's growing wealth with interest. As reforms for this class were piecemeal and slow, analysts believed it likely that working class discontent rather than middle class mobilisation would grow to demand a change of regime (Hadiz, 1994; Berger, 1997). Yet middle class forces played their part: within both the government apparatus and the army, young factions in favour of demokratisasi were taking shape (cf. Aspinall, 1996), while Islam became a rallying point for critical middle class Muslim intellectuals and army personnel under which to gather (Liddle, 1996).

In the context of such a broadly supported desire for reform, the social role and imagery of a sultan can have positive associations for local politics, but may be a problematic strategy for convincing working and middle class opponents. Pak Tur's success in getting his ancestral land rights recognised would depend on his talents for lobbying those in power in Paserese society. Can a sultan, a symbol of the feudal era that was ended before the New Order, return as part of a *reformasi* elite, let alone have his estates returned? If the *reformasi* era elite attain a similar level of control over society and extenuation of governmental responsibility for its acts as the New Order had, many things are possible.

### 1.1.3 Urban Dayak power play: Pak Josef

The third case concerns the appropriation of political influence through social authority. Control over land is not the main purpose here but rather a concomitant

<sup>2</sup> After Jalan Cendana, the street in Jakarta's wealthy Menteng district where the presidential family resided (Watson, 2002:120).

factor in a larger constellation of social influence. Pak Josef obtained influence with provincial and regional governments in East Kalimantan based on his steady rise to prominence as a customary leader among the province's Dayak –the indigenous people of Borneo- groups. In this capacity Pak Josef is regularly consulted as an authority on issues of Dayak *adat* land, but these consultations over land issues are but a part of his drive for local political power, in which he carefully balances *adat* discourse, New Order-style paramilitarism and Indonesian nationalism.

Pak Josef is a retired police officer who lives in a residential-cum-shopping area close to Balikpapan's sea front. He came to Balikpapan as a young man from Krayan, the homeland of the Dayak Lundayeh (hereafter Lundayeh) in the district of Nunukan, to study at one of the city's protestant schools. Once he graduated he joined Balikpapan's police force. Pak Josef returned to Krayan only sporadically. Police officers retire young, at the age of 55. When Pak Josef retired from active service – some fourteen years ago at the time of writing - he wanted to retain a prominent position in society. He was a board (and founding) member of Balikpapan's Evangelical Church, which was frequented by a considerable number of the city's growing Lundayeh community.

Amongst themselves the Lundayeh in Balikpapan frequently referred to Lundayeh *adat* to regulate affairs of daily life. Yet all *adat* leaders lived in Krayan, a money and time consuming journey away. Pak Josef used his time to study Lundayeh *adat* and, together with others, founded the Dayak Lundaya *Adat* Council (Dewan *Adat* Dayak Lundaya, DADL), which brought together representatives of Lundayeh communities throughout Indonesia.<sup>3</sup> Pak Josef gained fame as an expert throughout East Kalimantan. He was frequently invited to attend sessions of *adat* councils of other Dayak groups and, as a gifted speaker and colourful person, often contributed his own vision and advice to the proceedings. In return, prominent individuals from other Dayak *adat* councils would attend meetings of the DADL. Thus a network of members of East Kalimantan Dayak *adat* councils took shape. In 2001, closely following the downfall of Suharto and reformasi, the network consolidated its forces and established the Kalimantan Dayak *Adat* Foundation (Dewan *Adat* Dayak Se-Kalimantan, DADK) with Pak Josef as its chair. At this time claims of *adat*-derived land rights ignored by the New Order government had become prominent throughout Indonesia, while bloody clashes between Dayak and Madurese immigrants had earmarked Dayak in the social imagination as volatile and violent. No such ethnic fighting occurred in East Kalimantan, but a tense situation ensued nonetheless. A proliferation of *adat*-based Dayak land claims and the establishment of a DADK 'security force' in the province did little to alleviate the situation, but proved to be the vehicle for the DADK to further its reputation. As *adat* specialists, DADK officials are called upon by Dayak to substantiate Dayak land claims over other parties, as mediators between parties, and as advisors to the government when government land is involved.



Pak Josef

## Non-state violence

Pak Josef has risen to prominence on the opportunities that reform offered for people seeking local power yet lacking connections to the local political elite. Although Pak Josef has no standing as a Lundayeh *adat* leader back in Krayan, no Lundayeh will publicly abandon him in front of others. Two factors were of utmost importance to the success of the DADK. The first were the Dayak-Madurese wars that had taken place in West and Central Kalimantan, the second the close connections that already existed between government, military, paramilitaries and thugs during the New Order.

In 1997, 1999 and 2001, Dayak and Malayu warriors in West and Central Kalimantan clashed with, and forcibly evicted, thousands of Madurese migrants from land they claimed as theirs by *adat* rights, leaving hundreds dead. The local governments were taken by surprise and when order was restored – largely because the Madurese had fled- the Dayak were the main victors. These results translated into increased Dayak prominence in West and Central Kalimantan, as well as in a new attitude of respect and awe among the other migrants in these provinces. The fact that no fighting took place in East Kalimantan was largely due to the low numbers of Madurese migrants in the province and their tendency to live in urban areas rather than rural Dayak territories, contrary to the situation in the two other provinces. Nonetheless, tensions had risen in East Kalimantan as well and order was to be maintained.

The DADK fulfilled two functions. First, it ensured the government it would deal with Dayak troublemakers whom it could control, it felt, if the government took Dayak interests in the province at heart. The DADK would keep the government informed of what these interests were. Second, the DADK's security force would regularly parade in Balikpapan and Samarinda's streets, making sure that the non-Dayak population was aware of this body existing for their protection.<sup>4</sup>

Establishing such a force was relatively easy. The army had had a permanent role in government since the 1965 communist coup and subsequent anti-communist purge of the nation. The threat of another attack by this and other 'enemies from within' was used to justify a continued prominent military presence in society and civil government affairs: the army would safeguard the nation and protect its economic growth (Chalmers, 2006a:191-195). The civilian population was expected to support the military in these tasks to the best of its abilities and various official and unofficial civil organisations existed to this purpose. Some little more than frontages for criminal organisations. The regime, meanwhile, regularly made use of these groups where deployment of police or army forces was too sensitive (cf. Wilson, 2006:265-6). A strong example is the ousting of then future president Megawati Soekarnoputri from the headquarters of opposition PDI in 1996. Soekarnoputri's supporters had occupied the building in central Jakarta after their leader was removed as party chairperson at a rigged party congress. Leaving the military and police as impartial guardians of the state, the army deployed thugs to do the rough work of removing the occupiers. These entered the PDI headquarters at night

<sup>3</sup> The consequences of the difference between Lundayeh and Lundaya are discussed in chapter six.

<sup>4</sup> The board denied that the force was used to inspire fear, as critics maintained, although they agreed that this could be an -unintended- side effect.

and conquered the building in a violent fight that left two dead, many wounded and more arrested when uniformed police poured in to restore order (O'Rourke, 2002:12-14). Whereas only the regime could sponsor such organisations during the New Order, reformasi removed this check and made it possible for those with sufficient means to employ such groups to serve their own political and strategic interests. The DADK's security force did not engage in overt clashes, but the fresh martial reputation of Dayak and the presence of a number of these uniformed men and women made a difference in the smooth settlement of Dayak *adat* land claims. The possibility to dispose of such a force greatly increased the DADK reputation among Dayak, and Pak Josef's popularity as an *adat* authority to be called upon when land issues needed to be solved. By combining ethnic muscle with the recognizable threat of New Order-style 'official' heavies, the DADK created a new and highly prominent style of arguing *adat* rights. It took nerve and an eloquent, persuasive and respected leader to succeed, and Pak Josef was just the person for the job.

#### 1.1.4 The *adat* law speaks: a verdict in Krayan

The final case discussed here is one that stands out for the clarity and thoroughness of its procedure. Following is the official report.

The Great Adat Council of the Dayak Lundayeh  
Territory of Krayan Darat, Sub District Krayan  
District of Nunukan

##### Report on the proceedings of the *adat* session

*Report on proceedings of the session of the Great Adat Council of the Dayak Lundayeh of the territory of Krayan Darat, of 11 May 2005.*

When the complete testimonies of the witnesses of both sides had been heard, the following conclusion was reached that is recorded as being an accurate *adat* session decision. Based on the testimonies of the witnesses of both sides, we of the Great *Adat* Council of the Dayak Lundayeh of the territory of Krayan Darat after precise consideration pass judgement that:

- 1) Based on the conclusion of the Great *Adat* Council of the Dayak Lundayeh of the territory of Krayan Darat, it is herewith determined that the disputed land is the property of the descendants of Tapad Bayuk represented by Musa Lungung of Berian Baru village.
- 2) The karubet<sup>5</sup> that grows on the aforementioned disputed land is the permanent property of the descendants of Tapad Bayuk represented by Musa Lungung.

<sup>5</sup> Karubet is a coarse type of reed with a flattened shape. It is often used to make mats.

- 3) The disputed land will be staked out in order to establish a border considered correct by all sides, which will be confirmed by the Great *Adat* Council of the Dayak Lundayeh of the territory of Krayan Darat and which cannot be infringed upon by claims of whomsoever.
- 4) The Great *Adat* Council of the Dayak Lundayeh of the territory of Krayan Darat fixes 10% of the nominal value of the disputed land to cover the expenses of the *adat* administration. The nominal value of the land will be established by the Great *Adat* Council at the moment of the determination of the border of the aforementioned disputed land.
- 5) Regulation of karubet harvesting on the aforementioned disputed land will be fully managed by the descendants of Tapad Bayuk.
- 6) In order to ratify this decision we of the respective parties will each place our signature and when in the future this decision is transgressed upon, we will be prepared to prosecute in accordance with the *adat* law in force.
- 7) Thus we have truthfully drawn up this decision to be heeded as should be.

Drawn up in Long Bawan

At the date of 11 May 2005

#### Utilizing official law

The Dayak Lundayeh of the Krayan area in Nunukan are not a well known or large ethnic group in Indonesia, but they retain a strong and efficient *adat* system for managing their daily lives. The Lundayeh have four territorial Great *Adat* Councils that act not unlike a court of appeal for decisions taken by *adat* leaders at the village-level. *Adat* leaders among the Lundayeh take their position seriously and have gone to great lengths to convince government authorities of the validity of Lundayeh *adat* as a legal system. The drawing up of councils' decisions such as the one presented above and the formulation of *adat* law books of the four *adat* councils are recent developments inspired by the working methods of the government administration and courts of law. Official reports on *adat* sessions are sent to be archived at the office of Krayan's sub-district head, at the local police station and to the commander of the local military forces. This formalisation of *adat* procedures and the apparent codification of *adat* rules has not been without result. In 2004 the district authorities of Nunukan, convinced of the validity of Lundayeh *adat* as a living legal system recognised a Lundayeh claim of communal *adat* right to nearly the entire territory of the Krayan sub district. The district government gave *adat* leaders the responsibility to settle all issues pertaining to land in the area, provided official land law was not contravened. Yet among a population that is almost fully Lundayeh and with only a nominal national government presence in the area, the *adat* authorities decide a great deal more than land cases alone. Confronted with claims to *adat* land, *adat* rights and *adat* leadership that are supported by some and disputed by others, the validity of such claims is a bone of contention between claimants and government officials. How is the validity of a claim to be determined if the *adat* rules on which it is based are not written down, or at least uniformly reproduced by those who maintained to them? Presenting *adat*



rules and their workings in a manner that is ordered and recognizable to jurists thus is an attractive opportunity for those who have the knowledge to do so. Lundayeh *adat* leaders do, and the results are accordingly. Yet another way of attempting to get local traditional claims to land recognised thus is by reformulating them in the wordings of Indonesia's bureaucracy: using the jargon, systematic and reasoning of official law.

## 1.2 A problematic inheritance

The preceding cases illustrate that *reformasi* by no means meant a complete break with the New Order period. Its leading figures had been removed from government power, but replacing its system of governance and, what is more, improving it, was a major challenge that had only just announced itself. In the early days of *reformasi* the central government assumed a markedly timid position, especially in comparison to the preceding decades. The prospects of regional autonomy certainly played a part in this.

The last years of Suharto's presidency saw cracks appear in the façade of the New Order, the military-dominated, centralist regime of which Suharto was the undisputed head and symbol. These cracks would eventually lead to ridges, and had Indonesia-watchers wonder whether the nation would hold together (cf. Emmerson, 1999; Booth 2000; Rohde, 2001). A question that made sense: for years tensions had been building in the outer regions of Papua, Aceh and East Timor, and a general discontent with the hard hand of 'Jakarta's' rule and its lack of compunction in appropriating the nation's wealth had worn patience with the state and its leaders precariously thin in many parts of Indonesia.

Suharto had inherited an omnipresent and thoroughly corrupt administrative structure from his predecessor President Sukarno's rule (Robertson-Snape, 1999:592). A system that penetrated all layers of the administration, military and police, and that had been part of the *modus operandi* of the bureaucracy for as long as the majority of the population had been alive. Znoj (2007) speaks in this regard of 'deep corruption', a situation in which the practice of corruption is deeply entrenched in the social and normative orders. This makes that an individual is not only expected to partake in its practice, but that not taking a bribe can cause offense and even exclusion from social networks. Suharto's patrimonial power base had contributed to, rather than improved this situation. Public criticism of New Order corruption and nepotism met with little tolerance (cf. Bertrand, 1996; Riker, 1998) and had the government exercise a tight control of the press and such non-governmental organisations as existed.<sup>6</sup> Economic development and a strong national government were permanent and major goals of Suharto's government. The first decades of his rule saw Indonesia being shaped into a strong and spectacularly developing

economy which the world's superpowers vied to enlist as ally. From the '90s onwards, as the Southeast Asian economies developed spectacularly in the wake of the Cold War, critique of the New Order became more pronounced. The negative aspects of its rule – officially sanctioned corruption, the weakness of the legislative and judiciary branches of government and the unresponsiveness of the political process to the needs and desires of society – started to outline the limits New Order patrimonialism placed on the modernisation of the Indonesian economy. Suharto was growing older but was unwilling to discuss retirement or prospects of another regime, and although the regime made some gestures suggesting greater openness in certain areas of government, its inner circle of Suharto family, friends and business partners retained its grip on the nation's wealth (Aditjondro, 1998; Robertson-Snape, 1999).<sup>7</sup>

When the Southeast Asian economic crisis of the second half of the nineties hit Indonesia, it severely damaged the main pillar of New Order rule. With negative economic development (see Fukuchi, 2000) and critics growing more vocal, the regime's strong grip on the nation started to slip. Yet Suharto had a strong international reputation for dealing with crises, and his position as head of government was still perceived as secure. From 1997 onwards his government hence gained assistance from the International Monetary Fund (IMF). Now fighting a crisis and the interests of the regime came at loggerheads. Countermeasures included unpopular limitations of subsidies on food and fuel, which hit the poorer groups of the population, whereas expensive 'nationalist' projects ran by members of the New Order elite were continued against earlier agreements with the IMF (Schwarz, 1998:339-343; Sidel, 1998:181; O'Rourke, 2002:64-6). The scheme caused a wave of national and international protests and various governments urged Suharto to stringently implement the IMF measures instead. Suharto only conceded when the IMF announced it was postponing further financial assistance to Indonesia (Van Dijk, 2001:154-6). The ability of Suharto to lead the nation was now overtly questioned in Indonesia.

March 1998 saw the senate re-elect Suharto for another five year term as president. A few days later Suharto announced a new cabinet including close business associates, one of his daughters, and various former ministers with tarnished reputations. This Cabinet, as Schwarz (1999:351) noted, "accomplished the unusual feat of offending nearly everyone." The cabinet was announced in a period when critics of Suharto's regime had become more vocal, albeit not united. Student protests demanding democratic reforms and an end to corruption, collusion and nepotism were staged at campuses throughout the nation, while various Muslim and academic intellectuals had established themselves as Suharto-critics. Whether a power-gesture or insensitivity to social developments, the composition of the new cabinet openly combined all that these anti-regime protesters objected to.

Following Suharto's re-election as president, student organizations and NGOs began to coordinate their demonstrations into mass rallies and headed for con-

<sup>6</sup> Examples include the banning of the journals *Tempo*, *DeTik* and *Editor* for covering politically sensitive issues in 1994 (see Stanley, 1996).

<sup>7</sup> Examples of such gestures include the founding of a national human rights commission (KomNasHam) in 1993, the founding, maintenance and adaptation of a government-run national labour union since 1973,

frontation with the military by moving their demonstrations off campus (Van Dijk, 2001:177-180). The army could not stand by. Under mounting tensions all parties demanded it to express its political stance. This reaction came on the 12th of May, when demonstrating students of Trisakti University in Central Jakarta were shot at by police units using live ammunition.<sup>8</sup> Six demonstrators were killed, twenty others wounded. The incident enraged Indonesia. Demonstrations against the shootings held the next day turned into riots in many large cities. In Jakarta, mobs plundered, burned, raped and murdered for several days, mainly targeting the Chinese community.<sup>9</sup> Faced with such opposition, Suharto's cronies one by one withdrew their support, more than one with the intention of making a bit for his succession in mind. On the 21 of May, in a brief, televised ceremony, Suharto announced his resignation and told the nation that vice-president Habibie would take over.

The circumstances and actors that brought about the fall of Suharto raised important issues regarding his succession, the future position and powers of the government apparatus, and the actual implementation of democratic principles in governing the state. The new president, and indeed the Indonesian government, would have to implement a new style of governance in which their acts were subject to accountability, or it would risk continued social unrest. Yet to replace the New Order with a new unblemished government was nothing short of wishful thinking. The New Order was not a 'black-and-white' situation in which one was either in or out, nor was it a privileged private organization that one could join by invitation only. Few people reached a position of political seniority without being associated with the New Order and its mores. Doing away with New Order associates in the bureaucracy and in politics was next to impossible.

None of the leaders who were likely to take over had a clear majority of public support, and all were linked to the New Order in one way or another. Yet those who had managed to rise to prominence by cultivating an anti-New Order image found themselves in strong positions. Megawati Soekarnoputri and Nahdlatul Ulama leader Abdurrahman Wahid were the main candidates, but neither was strong enough to immediately challenge Habibie over the presidency.<sup>10</sup>

### 1.3 Central government under *reformasi*

The years following Suharto's resignation saw more political development than all of the New Order period. In a mere six years the nation doubled and exceeded the number of ruling presidents it had had since independence in 1945, and each influenced the reformation process in specific ways. Confronted with

the (dis)advantages posed by the New Order legacy discussed in the preceding paragraph, the consecutive *reformasi* presidents each dealt with the problems of change, control and the delegation of authority in different ways. The governmental directions which shaped *reformasi* during those years are the –sometimes tumultuous– background of national politics against which this research was conducted.

Suharto's successor, Yusuf Habibie, arguably was the *reformasi* president effecting most change. Demonstrating his enthusiasm for *reformasi*, Habibie introduced dynamism into government politics that contrasted starkly with the New Order's conservatism. An ongoing economic crisis together with a discontented population demanding political reforms, trying of New Order figure heads and, above all, effective help in meeting their subsistence needs, created a politician climate in which the national state was nowhere as powerful or coherent as it had been under the New Order. Independence movements in Aceh, Papua and notably East Timor had stepped up their activities following developments in Jakarta. Their successes were followed with interest by population groups in other areas: the unity of the Indonesian state was no longer a certain fact. Habibie's term was a "dingy in a social storm" compared to Suharto's "all anchor and no sails" as Bourchier (2000:15) remarked, and offered similar results. Disastrous in some aspects, great improvements in others.

Habibie stressed his commitment toward reform and his desire to do away with the government corruption, collusion and nepotism associated with the New Order. He demonstrated his intentions by calling for presidential elections to be held in 1999 instead of 2003, which would have legally been the end of his term. Yet even if Habibie had declared himself for *reformasi* openly and without reservations, most other reformists were among the demonstrators on the streets and not in the government. The members of parliament had gained their positions under Suharto and elections were not due until June 1999. This meant that intensive negotiation had to take place about all legal innovations, but even so more changes were made than during all of the New Order. Under Habibie political prisoners were released, bans on political activities were removed and a multi-party political system was introduced. Government was made more democratic by limiting the number of seats reserved in parliament and the senate for the military and other non-elected groups (Bourchier:2005:17-18; Hosen, 2003). Laws on press freedom and human rights were promulgated as well as, most important for this book, the 1999 Regional Autonomy laws that gave legal shape to the autonomy of the regions.

Habibie annoyed the military by bringing its budget under closer government review, yet army and president needed each other. Their long support of Suharto made the army highly unpopular with the reformists, while Habibie needed the military by his side as they could seriously hamper the development of the fragile reformation movement (see Anwar, 1999). Whether the army would relinquish its prominent role in government and society was one of the most immediate and major issues of Habibie's rule.

Possibly the major surprise –or shock– came when Habibie surprised the nation in January 1999 by announcing that a referendum would be held on East Timorese independence. The army instantly reacted to this threat to national unity by or-

<sup>8</sup> The police used to be part of the army, but was made an independent civilian organisation since

<sup>9</sup> Various observers (O'Rourke, 2002; Schwarz, 1999) suggest that these riots were coordinated by elements in the military using the situation to emphasize the importance of the army in maintaining order in Indonesian society,

<sup>10</sup> Nahdlatul Ulama is a religious organisation championing traditional Indonesian Islam (considered syncretic by modernist opponents) that has strong support. As its leader Wahid could attract both religiously-inspired and more worldly voters. Moreover, Wahid was male and many voters and politicians were uneasy with the idea of a female president.

ganising violent counter-movements. When an overwhelming majority chose for independence and the ensuing bloodshed led Habibie to agree to a UN force taking over peace-keeping tasks in East Timor from the Indonesian army, Habibie's popularity evaporated.

Various authors have suggested (for instance MacDonald and Lemco, 2001:176; International Institute for Strategic Studies, 1998) that the army henceforth took to stirring up rather than repressing regional fighting to discredit the democratization of the nation, and hence Habibie's presidency. The army's long arm would be perceived in one way or another in all violent conflict that was to come. Habibie lost the 1999 presidential elections and was succeeded by Abdurrahman Wahid. Where Habibie's East Timor adventures had gained him the animosity of the army and a large part of the population, he had also become ensnared in allegations of corruption and cronyism connected to his New Order past. Wahid and Suharto had maintained difficult relations at the best of times, which now worked in Wahid's favour.

Wahid's government was a compromise of all parties. All shared an interest in access to state institutions or resources, rather than a propensity to cooperate for the greater good of the nation (Hadiz, 2005:128). This showed the effects of Wahid's presidency. As Wahid spent considerable time travelling abroad to further Indonesia's international standing, he was far from the prominent figurehead president that Indonesia was used to. While beyond the controlling power of parliament when abroad, Wahid continued to devise policies and take decisions that often were self-willed, to say the least. Wahid offered Aceh the possibility of implementing Shariah law, rather than granting the military's request to bring the area under martial law. By visiting Israel and attempting to improve economic relations with the country, Wahid alienated many of his Muslim supporters (Conceicao, 2005:12-17).

A civilian like Habibie, Wahid questioned the influence of the army. Following international suggestions, he had senior military officials who had been active in East Timor brought before a court of law on charges of human rights violations. Moreover, Wahid allowed legal investigations into the wealth of the Suharto family and other New Order figureheads and announced that he would not hesitate in undertaking legal action against Suharto himself if necessary. By taking on the army and the New Order, Wahid was fast wearing out his allies' patience and tensions and instability in Indonesian politics increased significantly (Gorjao, 2003:24-37; Azra, 2003:73-74). Personally implicated in several corruption scandals, Wahid was removed from office as a result of attempts to protect debt-ridden tycoons from legal prosecution in 2001 (Hadiz, 2005:128; Suryadinata, 2001:182-191). In his stead, the senate appointed vice-president Megawati Soekarnoputri. Wahid, though, did not go without a fight. When faced with the news of the senate's meeting, he attempted to avoid the session by asking the chief of the territorial staff, general Susilo Bambang Yudhoyono, to declare martial law (Suryadinata, 2005). Yudhoyono refused.

Soekarnoputri had what Wahid lacked: widespread support in society and the backing of a military that had allied with her in their opposition to Wahid. The na-

tion, however, was still in a poor state. The effects of the financial crisis continued unabated, corruption had not been eradicated, and sectarian fighting flared in the Moluccas, in Sulawesi, and in West and Central Kalimantan.

Soekarnoputri's task was clear and the nation looked on expectantly. Like Wahid, Soekarnoputri got together a cabinet consisting of all major parties and including General Susilo Bambang Yudhoyono yet contrary to Wahid, did little. Soesastro (2003:2-4), analysing Soekarnoputri's performance five months into her presidency, wondered whether Soekarnoputri's 'hands-off' style of leadership would be sufficient to guarantee her political survival until the 2004 elections. Soesastro's question was answered three years later by Slater (2006:210), who succinctly describes Soekarnoputri's cabinet as a "collusive arrangement which produced impressive stability – dare I say sclerosis – at the elite level." Harsh words, but not without truth. The army's influence in society met with little opposition, corruption continued unabated, and whereas most fighting in which army involvement was suspected was ended, Islamic extremists carried out bombings in Bali, Jakarta and other places. If anything, Soekarnoputri's presidency showed that those in power during the New Order had largely retained their positions and could oppose and do away with strong-willed presidents if necessary (Conceicao, 2005:69). Soekarnoputri sat still and led her cabinet and the army govern the nation, and arrived at the 2004 elections relatively unscathed.

Yet Soekarnoputri's presidency also saw the promulgation of some highly significant reform legislation. Best known are the 2004 Regional Autonomy Revision Laws, which replaced the 1999 Regional Autonomy Laws, but of major importance to Soekarnoputri's direct future was Law 23 of 2003, which decreed that from then on the president was to be elected directly by the population instead of indirectly by the senate. The 2004 presidential elections commenced this new arrangement.

Soekarnoputri lost the 2004 elections to Susilo Bambang Yudhoyono. The general's political ambitions had brought him into conflict with Soekarnoputri earlier on, resulting in Yudhoyono's exclusion from cabinet meetings. Yudhoyono drew his conclusions and resigned from his cabinet position (Suryadinata, 2005:24). Yudhoyono had an excellent reputation among the population. He resigned from Wahid's cabinet when the latter asked him to declare martial law to save his presidency, and his row with the inactive Soekarnoputri profiled him as an individual with political outlooks. The 2004 parliamentary elections saw the major parties supporting Soekarnoputri punished for their years of inactivity. Yudhoyono gained his support from the fringes: a number of smaller new parties, as well as the powerful Muslim faction (Liddle, 2005:330-333). His competitors were old hands with a definite New Order past, implying a likely continuation of the incumbent political elite (Slater, 2006:211). The Indonesian masses, more than anything, wanted change (Suryadinata, 2005:25; Sebastian, 2004) and when Yudhoyono, viewed more or less as an independent outsider, won the elections, popular expectations were high. Yet Yudhoyono had a minority in parliament, while the legislature had been hugely strengthened by powers stripped from the presidency in constitutional amendments from 1999 onwards. As a result, a translation of Yudhoyono's sweeping and ambitious reform program into legal form largely got stranded on the way

(Lindsey and Santosa, 2008:19-20). Yudhoyono was bound to make concessions to his election promises and, in general, his presidency is plagued by expectancies exceeding his government's capacity to deliver (Kingsbury, 2008). It seems that like with all *reformasi* presidents, Yudhoyono's drive for change is bogged down in the swamp of political rivalry and an extensive bureaucracy.

As this and the preceding paragraph illustrate, the onset of *reformasi* thus marked the beginning of a period of dynamic redefinition of the power of the state and its representatives. Even though the forming of a new institutional framework of power remains an ongoing affair, political developments at the national level can be seen as giving rise to various new developments that may well influence access to land at the grassroots levels of society. The preceding paragraphs contain various developments that are likely to impact land affairs in the regions.

1. The decreased powers of the president. New legislation has curtailed the individual authority of the president within government. Whereas the president used to have extensive autonomous law-giving authorities, these days the consent of parliament is required for the implementation of new policies. Suharto and Soekarnoputri issued presidential decisions regarding land tenure and land usage independent from parliament. This is no longer possible. Moreover, presidents can be impeached and removed from office.
2. The importance of elections for the composition of the regional and national governments. The increase in the number of political parties will make it difficult for the old elite to maintain its grip on the government. Reformers can start new political parties and cause quite a stir in agrarian and social legislation, as many claim they shall in time to come.
3. The replacement of a single elite's authoritarian rule by a new situation in which power-brokers with different backgrounds vie for influence. Money politics, intimidation and political violence remain accepted strategies. Nobody in Indonesia was powerful enough to assume the position of paramount leadership that Suharto left vacant, so the position of leader of the elite is –like that of president- open to competition. Multiple camps mean various possible ways of reaching one's goal. In the case of land issues this means that potential alliances and the choice of strategies for parties have increased.
4. New networks of patronage take shape, through political parties or otherwise, aimed at gaining access to, or even control over, state institutions. It is no longer sufficient to be in alignment with former New Order power-brokers whose positions are weakened by the emergence of other leaders. Indonesian political society has become dynamic and competitive, and land-users have to keep an eye on developments in the political field to safeguard their positions.
5. The diversification of the elite and the ensuing splintering of control has decreased chances of successfully countering corruption. More networks and a weakened overall leadership make control less secure, and may in

fact encourage corruption rather than combat it. A worrying development for land-users needing to work with the bureaucracy.

6. The decreased official role of the military in the government of the state does not mean that its social influence has evaporated. It does, however, in line with the diversification of elites, mean that the usage of violence –military sponsored or otherwise- has become more diversified. Whereas the New Order would employ thugs for its dirty work, the various new elite factions as well as other organisations –Pak Josef's organisation for instance- have taken the lesson at heart and dispose of security forces of their own.

## 1.4 Researching reform in the regions

Political developments in the regions used to be strongly tied to those in the centre. Members of regional parliaments focussed on the central interests of their parties and patrons rather than on the local needs of the electorate they represented (Malley, 2003), or on increasing their salaries rather than on controlling the regional legislature (cf. McCarthy, 2007). This resulted not only in a persistent lack of accountability (Malley, 2003:109), but also an excessive political domination of the centre over the regions (Erawan, 1999).

Immediately following *reformasi*, local political and military elites attempted to preserve their influence in the face of newly emerging competitors (e.g. H. Schulte Nordholt, 2003 and Antlöv, 2003a:72-77) and were initially quite successful. With little room for independent manoeuvring and no effective checks on state power, reform measures were halted or lost somewhere deep within the ranks of the bureaucracy without attracting attention. An inert bureaucracy thus formed a major obstacle to building a more transparent and democratic Indonesia (Bourchier and Hadiz, 2003:21-22). Pessimistic observers predicted that decentralisation would lead to an era of "little Soehartos" (Kimura, 1999; Aspinall and Fealy, 2003:5): each "little Soeharto" controlling and pillaging his own little piece of Indonesia for the individual benefits of a select few. Others feared for economic disaster and disintegration of the state, should decentralization fail (Ray and Goodpaster, 2003; Sukma, 2003).

What happened was that as with the centre, change in the regions had to be commanded by the public, and often the public in the regions needed little encouragement. Local NGOs monitoring government activities mushroomed throughout Indonesia (Sakai, 2002; Antlöv, 2003b), and were unafraid to publicly report on their findings and voice suspicions of corruption when and where they arose (Rashid, 2003:66). Yet, as at the central level, regional *reformasi* is not an overall success. In many instances resourceful local elites able to exercise autonomous choices (Hidayat, 2005; Heryanto and Hadiz, 2005) managed to maintain their hold. Regional politicians intent on reform find themselves isolated if found a liability to elite interests, while accusations of corruption –irrespective of their validity – have evolved into a popular strategy to tarnish opponents' reputations (N. Schulte



Nordholt, 2005). By and large, regional populations fail to apply to the judicial, civil and democratic rights improvements introduced in new national legislation (Törnquist, 2002) whereas activists aware of these legal changes frequently find themselves marginalised by the elite and unable to break its grip on the government (Hadiz, 2000). Regional autonomy provided a strong impulse to identity politics. Regions with multiple ethnic groups within their boundaries found themselves in a situation where a delicate balance needed to be maintained between rivalling group interests (e.g. Moeliono and Limberg, 2004; McCarthy, 2004). In regions with dominant groups, key positions in government and society were used to constellate and secure the groups' authority in the government and legislative sphere.<sup>11</sup>

In other cases, however, regional policy-making processes have become more inclusive. In various areas NGOs succeeded in introducing collective action to the population, thus providing an incentive for politicians dependent on the voting public to take the public interest at heart (Rosser, Roesad and Edwin, 2005). Elites are learning to acquiesce with election outcomes (Case, 2000): the 2004 presidential elections saw losing candidates protest the 'lost' votes they had been denied, but refrain from mobilizing supporters to take to the streets (Qodary, 2005). If Indonesian democracy is maturing in the centre, the regions are bound to follow suit. Indonesia is stabilising democratically, and its economic progress will depend on improving its unreliable judicial system and its corruption (Rieffel, 2004). If the nation can manage this, reformasi stands a good change of proceeding smoothly.

## The regions as arenas

The regional level of government and society is where the effects of this process are reflected most vividly, and access to land is a major issue. It is contested in an area, a place where competing powers meet to decide who has authority. Olivier De Sardan (2005:186) sees arenas as places where "...heterogeneous strategic groups confront each other, driven by more or less compatible (material or symbolic) interests, the actors being endowed with a greater or lesser level of influence and power. But one also encounters centres of instituted local power...all have specific powers, linked to their functions and recognized as such." In the arena authority is shown to be dynamic, although established local powers may be beyond the dislocating influences of such dynamism. The shape and identity of such arenas is

<sup>11</sup> For instance, various Balinese districts promulgated regulations strengthening migrant influx control (World Bank, 2003a:14; H. Schulte Nordholt, 2007). In Sulawesi, districts promulgated regulations aimed at acknowledging *adat* authorities or aspects of *Shariah* law (Tyson, 2006). In West Sumatra processes were set in motion to return to the Minangkabau *nagari* as the main administrative unit at the village level (F. and K von Benda-Beckmann, 2001), while in the same province ethnic Mentawai formed the opposition of this foreign concept by arguing for the *laggai* instead (Eindhoven, 2003). Districts and municipalities throughout the nation implemented (aspects of) *Shariah* legislation (cf. Candraningrum, 2006; Astarudin, 2006) or that inspired by *Shariah*. Well-known examples, particularly for the social unrest they inspired, are the anti-prostitution and anti-alcohol district regulations implemented in Tangerang, West Java, (*Jakarta Post*, 6 and 9 March 2006). Similar regulations were enacted in nearby Depok (*Jakarta Post*, 21 April and 2 December 2008) and attracted the interest of 28 other regions considering implementation of similar legislation (*Jakarta Post*, 8 June 2006). The municipality of Banjarmasin (South Kalimantan) introduced legislation (Municipal Regulation 13 of 2003) forbidding drinking, eating and smoking in public during the fasting month of Ramadan.

defined by local circumstances, making the regions all the more specific in appearance and functioning.

The regional level of government is the level and the place where Kurtz's (2001:177-178) observations on the state come to the fore: things are done in the name of 'the state', yet the state is an abstract and theoretical configuration which cannot do anything as such. All actions carried out in its name are interpretations made by government officials: people who often are members of local society, have certain interests and roles in it, and are aware of local relations of power. These officials have adversaries as well as allies and next to themselves other, non-government authorities exist who have a role in governing local society. In Indonesia's largely agrarian society the official laws, local rules and tactical agreements controlling access to land at the grassroots level of society is a major arena for studying the impact of *reformasi*. A scarce and coveted resource, the multiple means, rules and strategies by which access to land can be obtained characterize its obtainment as a distinctly fuzzy process: no neat boundaries separate the various manners in which access might be generated and no clear rules regulating the trajectory of the process exist. Two main, closely related aspects of the process stand out when looking at cases' evolvments and the consequential outcomes: relations of power –which I'll discuss in the next paragraph- and the political strategies that parties pursue. Politics here means more than the workings of government. It also refers to the meetings of village elders and to the grapevine circuit rumours of the secret dealings of politicians and businessmen. It is, in short, concerned with attaining influence and power and with convincing others to support this quest. By necessity, parties' political strategies are highly context specific and in studying them I will make use of Bailey's (2001:31-35) formula. Bailey argues that political strategies can essentially be considered as consisting of two sets of elementary categories. The first refers to goals –what the protagonist desires to be the outcome. Resources –the means available to achieve these goals- and constraints –whatever stands in the way of achieving them. These can be rendered as a function  $S = f(G, R, C)$ : strategy is a function of the specific goals, resources and constraints. If these three are known a suitable strategy can be deduced and, if one of these values is changed, the strategy can be adapted accordingly.

The second set refers to the relation between protagonist (p), opponent (o) and umpire (u). The protagonist and opponent engage in competitive moves, which are governed by the rules and concepts of the system within which the two engage, and the observation of which is monitored by the umpire. All three -protagonist, opponent and umpire- dispose of goals, resources and constraints and the first function  $S = f(G, R, C)$  must therefore be supplemented by a second function  $pS = f(oS, uS)$ . The protagonist's strategy is at least in part shaped by what he will expect his opponent's and the umpire's strategies will be. Obviously these functions should not be followed into the extreme (the opponent will adapt his strategies accordingly, as will the umpire, which will have the protagonist adapting again etc.), and room should be left for the spontaneous, unexpected. Not all that happens is carefully planned rationality. Many actions and evolving series of actions contain spontaneous, unforeseen and unintended developments. Sentiments –not always

rational- can play havoc with the best laid plans and certain sources of authority –religion or custom, for instance- can provide veritable wildcards at unexpected moments. Dealing with politics and political schemes thus requires those engaged not just to make sense of events against the background of the relevant normative order of law, customs, etiquette and so on, but also to manage with the consequences of unintended and unforeseen events. As Bailey (2001:2) suggests, to be successful politicians should approach political events scientifically and analyse them in the broader context in which they take place: they should be seen as parts of a natural system. If we consider the effects of decentralisation discussed in the first part of this paragraph in the light on Bailey’s suggestions, would they imply that we are faced with a political situation in the regions in which the renaissance strategist Niccolo Machiavelli would have had a field day? In all probability not, as the possibilities and constraints created by decentralisation within the context of an established nation state pale compared to those of the warring and disunited renaissance Italian city states. Nonetheless he could well have enjoyed himself: hard rationalism and enigmatic pragmatism are difficult table-companions when it comes to efficient governance, but land tenure in the regions of decentralised Indonesia is certainly an area in which they find themselves seated opposite one another. The ensuing conversation cannot be but interesting.

By referring to the historic figure of Niccolo Machiavelli and the calculating, practical works on politics and leadership that he wrote I wish to emphasize an important factor in dealing with land tenure at the regional level: power. With the regions relatively autonomous and governed by directly elected regional heads and parliaments, the influence of both popular forces and enigmatic local leaders –traditional, religious, political or otherwise- is likely to have emancipated and gained in importance. With diverse leaders and population groups able to exert pressure or even gain a voice in the government administration of the regions, the shape, discourse and results of power are factors of importance in studying access to land.

## 1.5 Power in society

Weber (1964:152) defined power as “the probability that one actor within a social relationship will be in a position to carry out his own will despite resistance”. In other words, as Kurtz (2001:22) suggests, “the ability of A to bend B to his or her will”. My point of departure here is a critical discussion of the assumption that the power of governance is an exclusive prerogative of the state. In a Weberian conceptualisation of the state we would consider a centralized entity that taxes, conscripts, and monopolizes legitimate violence within a given territory. In this view states operate as rational entities that stand above society and govern through the promulgation and implementation of legislation in a neutral, disinterested manner, assisted by a large bureaucracy (Nugent, 2007:198; Holton and Turner, 1990:107-110). The state provides order and safety in the face of chaos and danger. Its sovereignty must be established in the face of “internally fragmented, unevenly distributed and unpredictable configurations of political authority that exercise more

or less legitimate violence” (Blom Hansen and Stepputat, 2005:3). The state thus requires individuals to renege their sovereignty and become its subjects in submitting to state rule enforced –if necessary- by the application of legitimate violence (Wagner-Pacifici, 2009:27-28). This combination of legitimacy and violence lies at the heart of its sovereignty as well as of its power. Sovereign power exercised by a state, Blom Hansen and Stepputat (2005:3, 20) argue, is always tentative and unstable and depends on the performance of violence and the display of a ‘will to rule’ for its legitimacy. Such displays of power highlight the role and authority of the state in governing the nation and the need for its existence. Yet such theoretical observations embody an implicit danger in that they should not be taken too literally. They suggest the presence of a boundary between the state –aloof and powerful- and a subjected society which in practice cannot exist. The state is an abstract concept, a source of legitimate authority that depends on human physicality to be empowered. State authority is exercised by functionaries, thus giving it a definite human and partial character. In conceptualising the power of the state I hence follow Mitchell’s (1991:78) argument that the “distinction between state and society must be taken not as the boundary between two discrete entities, but as a line drawn internally within the network of institutional mechanisms through which social and political power is maintained”. In its operationalisation state power is very much a part of the society which it governs. It is vulnerable to political scheming and partial to the views of those controlling it. As such it is contested by competitors referring to alternative sources of power embedded in society.

Authority is not defined by official legitimization, but by the capacity to take and enforce binding decisions (Gamson, 1968:21-23; Bachrach and Baratz, 1962). For the state this means that a specialized and informed approach, rather than a remote and elevated one is called for. Foucault (1991), in discussing governmentality, argues for rational management; a concept that includes the identification of key objects of regulation on which management relies, the generating of expert knowledge about these objects and the establishment of a body of experts who can monitor the behaviour of these objects based on the knowledge generated. Rational management is intimately intertwined with the dimensions of knowledge, power and representation that are a central axis of Foucault’s work. Power, in these, is everywhere in society, in all human interactions which are to a greater or lesser extent all governed by power relations. For Foucault, power is omnipresent, relational and intentional. It is not an institutionalised property, does not possess an omnivalid structure and does not belong to a particular group or class. Power comes to the fore in strategic relations between multiple power holders relations and the tactical discourses they use (cf. Foucault, 1982:780).

There is no power without resistance, and power struggles thus work to identify relations. The main objective of struggles, he writes (1982:781), is not to attack a specific institution, or group, or elite, but rather to struggle against a technique or form of power. Power relations, then, become apparent in discourse. As Leigh Brown (2000:31) argues, for Foucault discourse is not mere language, but “a system of rules regulating the flow of power which serves a function of promoting interests in a battle of power and desires.” Foucault (1979:100) argues that there is no such thing as a division between accepted and excluded discourse, or a domi-

nant and dominated one. Rather there is a multiplicity of discursive elements that can come into play in various strategies. It is the usage made of these elements, in various ways and by various actors, which make up the discourse. Shifts and reutilizations of identical formulas for contrary objectives in this discourse-making, the chronological development of discourse and counter-discourse and of power-constellations and their fluctuations are what make power relations apparent.

### National unity and state legitimacy

It is through discourse that the debate on land rights in Indonesia is being waged. Law, indigeneity, descent, national unity and community, to name a few, are the main elements that underlie claims to land in East Kalimantan and are strategically deployed to shape the discourse and hence, following Foucault, to create truth (Leigh Brown, 2000:33; Devos, 2004:128-134). Control of the discourse thus implies control over what is perceived as 'truth,' making such control of utmost importance. In the case of the debate on land rights, the discourse largely evolves around differing discourses of nationhood and rights. Parties favouring one or the other take a different direction with regard to national unity, communal identity, history and legitimacy, and arrive at radically different conclusions regarding authority over land.

At the base of the discussion lies the notion of the unity of the Indonesian population as a nation. A nation, Smith (1991:14) argues, is "a named human population sharing a historic territory, common myths and historical memories, a mass public culture, a common economy and common legal rights and duties for all members." Moreover, the people forming a nation share a 'fellow feeling' (Geertz, 1963) that unites beyond the rational and instigates an emotional bond. The qualities of this fellow feeling and the sense of national unity within Indonesia's various ethnic groups, is a cause for concern. Anderson's (1991) notion of 'imagined communities,' which holds that every political community is both inherently limited and sovereign as well as – to a greater or lesser degree – imagined, helps to pinpoint this problem. Anderson maintains that it is impossible for all members of large communities to engage together in actual communal life or even meet one another, making that the prime example of an imagined community, the nation, consists of shared values, notions and experiences in the collective emotional imagination of its members rather than of actual real communality. Anderson argues (1991:121-3) that in Indonesia Dutch colonial rule brought about a sense of unity in the archipelago's population that went beyond its multitude of ethnic affiliations (ibid.:131-3) which was consolidated by the creation of a centralised political and economical framework and the development of a colony-wide *lingua franca* in the 1920s. It was, however, a unity that was created and imposed from the outside rather than through uniting popular experiences.

The discourse of the Indonesian state strongly emphasizes unity as is apparent in, for instance, the national motto, *Bhinneka Tunggal Ika* (Unity in Diversity) and its national heroes (*pahlawan*). The nation's moral base, the state ideology *Pancasila*, stresses the nation's unity over the population's specific cultures and

religions, which inherently points to an essential characteristic of the Indonesian state. Underneath this layer of national identity lies a thick base of ethnic diversity, the particular manifestations of which have stronger uniting versions of Smith's elements of national identity than the state has. The status of national hero, Adam (2005:266-268) observes, is virtually reserved to those who fought for the independence of the nation. Heroism lies in fighting for, possibly dying for, the motherland rather than a distinguished accomplishment in more peaceful areas such as the arts, science or politics.<sup>12</sup> The state motto of Unity in Diversity ratifies the varied cultural composition of the nation, but in government practice 'unity' overrules 'diversity.' As Acciaioli (1985:162) wrote, the locus of diversity in Indonesian state ideology is mainly folkloristic. Regional variety in dance and art are fine, but national interests prevail wherever overlap with local and ethnic tradition arises. However, national consciousness is not achieved merely by governmental decision. Cultural identity is, as Kahn (1998) argues, inevitably contested. People do not just accept identities, whether these stem from ethnic tradition or from the machinations of those in power. Culture, tradition, identity and ethnicity are subject to continuous review by those who are supposed to adhere to them, and, returning to the Foucauldian take on the role of discourse, the outcomes can be unpredictable.

The New Order regime actively worked on a mergence of state and traditional authority by inserting the state into the realm of traditional culture, albeit largely on the level of folklore. Provincial and district governments, for instance, applied local ethnic designs in the architecture of their offices and their coats of arms to emphasize the commitment of local governments to local interests (Acciaioli, 1985; Colombijn, 1994:335-337). Likewise regional customary ceremonies of importance would be visited by representatives of the local government (cf. Hutajulu, 1995; Yamashita, 1997; Picard, 1996). The centre itself made a conscious effort of visually defining its interconnectedness with the common nature of Indonesia's diverse cultures through the highly symbolic Taman Mini theme park in Jakarta, containing life-sized replica's of regional architecture set around a miniature archipelago (Errington, 1998:188-227; Pemberton, 1994a). Cultural music and dance performances from the park were regularly televised, while the buildings themselves contained comparative expositions on similarities among regional customs, and tableaux depicting Indonesian history.

Anderson (1991) observes that the creation of a nation state involves the introduction of a formalised high culture that is supported by literacy and other media – a move to stem and counteract the unpredictability of local circumstances. High culture provides a forum to the dominant elite to convince subordinated groups of its legitimate role in representing the wider public or national interest. Many rulers do this through a cultivation of mystique, dramatic performance, rhetorical strategies, through a combination of all three (cf. A. Cohen, 1981), or through legitimizing appeals to a glorified past. In this last sense, nationalism is a mass popularisation of elite tactics (Herzfeld, 2000:234) that allows for the discursive creation of 'truth' in the best Foucauldian tradition. Quoting Marx and Engels, Shore (2002:2) points out

<sup>12</sup> See <http://www.tokohindonesia.com/pemuka/pahlawan/index.shtml> for an overview of national heroes.

that the class that is the dominant material force in society is at the same time the dominant intellectual force. If successful in convincing the public of the benefits of its rule, the elite will, in many instances, receive popular support even if financial or other malpractices are demonstrably taking place (cf. Platteau, 2004).

When combined with Cohen's strategies of legitimization, Anderson's (1990) analysis of power in Indonesia emphasizes those aspects of authority related to the individual. Anderson argues that political occasions such as mass rallies, symbolic marches and hortatory speeches function to concentrate and display power (p. 26). The power absorbed from the "willing submission of thousands of persons" (p. 27) attending such occasions concentrated and increased the power of the leader, especially so if different or even hostile groups could be made to attend. Moreover, the possession of mystical objects (*pusaka*) and the practice of certain rituals form an essential source for the generation of mystical powers (p. 27).

## Alternatives

The aspects of traditional power that Anderson discerns in his analysis were appropriated in the New Order-era image of Indonesia in which internal unity and the legitimacy of the state came together in the personal identity of the regime's leaders. Indonesia's first two presidents are clear examples of the embodiment of Anderson's legitimizing practices. Soekarno's fiery speeches, political rallies and mystical gatherings gained him a near legendary status, while Suharto's enigmatic deliveries, his *pusaka* collection and his alleged mystical powers have been subjects of discussion both within and outside Indonesia.<sup>13</sup> Yet Anderson's rather static oppositions of 'tradition' versus 'modernity' and 'Java' versus 'the West,' are problematic. Philpott (2000:87-94) notes that this approach of power and culture presupposes a mutually exclusive relationship that does not exist in reality. Moreover, Philpott (2000:93) argues quoting Pemberton (1994:10), that particular discourses of power cannot simply be mobilized through references to culture or tradition. Any interaction between the two domains generates transformations in either or both, making them fluid rather than static, and inclusive rather than exclusive. The validity of static abstractions is also contested by the work of Scholte (1997:31-6) who argues that it is globalisation, and not a self-explaining internal coherence, that has caused the emergence of a unified Indonesia.<sup>14</sup> Scholte sees Indonesian nationalism as an attempt to secure a collective identity, community, and autonomy relative to the rest of the world, without which this demand for unity might not even exist. In his view, social life in Indonesia involves international circumstances, national conditions, local situations and the interconnections between them. There is, in short, more than the state and the ethnic or cultural as-

<sup>13</sup> Following Suharto's resignation as president, a diverse and lively range of Indonesian language publications appeared on his mystical resources. Their authors do not doubt or refute Suharto's powers but rather attempt to explain his proficiency (for instance Bangunjiwo, 2008; Pamungkas, 2008) and occasionally how he eventually lost his powers (Artha, 2007:139-180).

<sup>14</sup> Pfaff-Czarnecka et al. (1999:9-40) similarly perceives such links between globalisation, ethnicity and nationality in a wider, Southeast Asian context.

pects of the local context. It is quite possible for other influences to shape identity at any of these levels.

Taking this presupposition one step further, into the realm of philosophy, allows me to bring in Axel's (2003:113), comments on Anderson's notion of imagined communities. Axel discusses the double directionality – illumination and elevation versus deception and corruption – that philosophy ascribes to the imagination. He suggests that whereas Anderson inscribes the nation with a legitimacy that approaches the Weberian approach discussed above, the nation as an imagined community has definite abilities for self-transgression, for instance through communities of fanatics. Axel (p. 128) argues that the success of an imagined community is based upon the exclusion of the risk that the imagination may submit to self-transgression. The existence of such a possibility of submission signifies an ethical problem: evaluations of communities turn not upon truth or falsity, but upon the hypothetical successful operation of the imagination to produce accountable, responsible, culpable subjects. The point with an imagined community, then, is not to stop at an analysis of its discourse but to assess whether it is met with social acceptance as well.

In dealing with the politics and power play regulating access to land, two main 'imagined communities' are involved. One can be defined as the Indonesian state, the legitimizing discourse of which has been introduced earlier in this section. The other community concerns a more problematical category consisting of smaller entities whose common denominator is that they are localized communities *within* the state, seeking recognition – to varying degrees – of autonomous rights *by* the state. Often these concern rights to land, especially rights to *adat* land. The discourses of this second category are markedly different from that of the national state, not only in that they present an alternative identity in addition to that of Indonesian civilians, but also in that they may link to forces *outside* the nation. The inward orientation of the nation –imagined or not– is questioned by Appadurai's (1996) conceptualisation of social reality into a variety of 'scapes'-themed networks connecting people beyond national boundaries and around the world. This approach sees Indonesian *adat* activists connected in a global cultural flow of a worldwide indigeneity movement. The modern ease of international communication links *adat* NGOs in Indonesia directly to international donor organizations and has logged them securely into a worldwide network of international indigeneity (cf. Niezen, 2001; Ellingson, 2001:331-372; Keck and Sikkink, 1998) in which local groups bypass their own (local) government by contacting (inter)national allies in order to apply pressure on the government from outside.

The normativism of access to land in *reformasi* era Indonesia –a broadly indicated yet functional setting of the problem– thus requires a corresponding approach. Having established the potentially plural origins of power in society and its dynamic nature, the in-depth analysis of the political processes leading to attainment and maintenance of power in land issues –as well as of the application of such power– must be characterized by these concerns. Further definition and accentuation of the research problem is the next step.

## The personification of power

Indonesia is a nation in which ethnicity, race, gender and religion have defining roles when it comes to an individual's place in society and interaction with others (Chalmers, 2006a:xiii-xv; Drake, 1989:6). Yet within the own group, or within the family, hierarchic relations exist as well. In many parts of the nation, the positions of leaders and spokespersons in society as well as in government are filled by senior men. Various authors (e.g. Bowen, 2003:256 and Nyman, 2006:133) have discussed the paternalist nature of Indonesian society and the disadvantaged positions of youth and women. In many places women's public roles are, as Nyman (2006:134) observes, limited to 'social functions' by traditional and religious values. This is not to say that women have no voice; as is shown in the field research-based work of, for instance, Slaats and Portier (1981:199-200) and Simbolon (1998:16) women influence events at the village level through their men.<sup>15</sup>

The visibility of women's influence often decreases as the formality of events increases. In the fieldwork for this research this became evident in the virtual absence of women as parties in land conflict, public figures in land affairs or in *adat* functions. Even when I – or thought more effective, my wife – actively approached women to discuss land affairs prospective respondents would refer us to their husbands, sons or brothers where cases went beyond the level of the family. The public domain of land matters in East Kalimantan is a men's world. Women's influence is limited to the private domain.

The importance of age, however, appears to have been overtaken by the opportunities that *reformasi* brought. Young men publicly dispute the paternalist structures that keep them from influence and deploy other, critical discourses – for instance by founding an NGO – that allows them to create a public role with potential importance for themselves unrelated to local senior figures. Access to power has somewhat increased, but not for all.

## 1.6 Research questions and methodology

In studying how changes pertaining to *reformasi* and decentralisation politics impact access to land at the regional level, political strategies and power relations in local arenas are characterized – following Bailey – by a close study of the goals, protagonists, constraints, opponents and umpires.<sup>16</sup> The regional level of government has received far-reaching autonomous powers while its parliamentarians and regional government heads are made to heed popular pressure through a new model of direct elections.

<sup>15</sup> My own research in Mentawai and East Kalimantan confirms this observation. When a meeting is held men sit in a circle to discuss matters, often with their wives behind them. Wives make suggestions to their husbands or – depending on status and age – shout them loud enough for all to hear at once. Simbolon (1998:16) argues that women thus have access to land through their men. This means that their access is mediated and that they do not dispose of direct control.

<sup>16</sup> See paragraph 1.4 for a discussion of Bailey's formula for the analysis of political strategies.

As a political arena, the region hence is subject to general developments in Indonesian politics and society set out in paragraph 1.2 and 1.3, as well as to developments particular to the regional level, as discussed in paragraph 1.4. There is a variety of actors that may take the stage as protagonists: members of the government, members of the old or the new elites, companies, as well as individuals from among the masses of the population: farmers, NGO leaders and indigenous peoples and their chiefs. The goal for each is clear: access to land or the natural resources on or in that land, or possibly – consider the case of Pak Josef discussed in paragraph 1.1.3 – power and social prestige by attaining decision-taking authority over access to land. These goals can only be attained if the constraints posed on them by opponents can be overcome: be it through official law, popular opposition, customary norms or even violent counteractions. Opponents will generally come from the same groups that I have assigned the role of protagonists, which leaves the position of umpire. Seen in the light of the points made earlier on the dynamic nature of power and the diversity of its sources, I expect much of this role.

Controlling access to land is a highly visual and symbolic way of exercising or disputing power. This makes that apart from the casting of roles and the strategies applied, the sources of authority and related discourses that local power brokers call upon must be essential parts of the research. So far, the accounts presented in paragraph 1 have shown that in the districts of Paser and Nunukan these sources of authority largely consist of *adat* and national land law, with suggestions of other official legislation. Yet the social circumstances shaping and directing the progress of these specific cases are not taken into account. On a scale of potential constellations of authority limited by 'statutory' versus 'non-statutory', the pair of national law versus *adat* appears to be located at opposite ends. The core of this study hence is formed by the arguments, processes, and results that are reached in the area between those two poles. My objective is to gain insight into the socio-legal processes of establishing and maintaining access to land and their relations to the politics of *reformasi*.

This objective, the preceding discussion of effects of *reformasi*, politics after the New Order, and the considerations of the role of power in society, led me to formulate several assumptions regarding the meaning of *reformasi* for land claims, these are:

1. The quantity of land claims has increased since *reformasi*.
2. Land claims are diverse: references are made to various sources of authority and it is uncertain whether official authorities have the final say.
3. Indigenous groups reclaim land from migrants or the government, basing themselves on customary *adat* rights. It is also possible that they do not actively claim the land but are involved in attempts to regain them.
4. Identity, indigenous or otherwise, hence plays an important role in land claims.
5. District governments sometimes support these claims, but often refute them. There does not seem to be an official stance, so officials could be reacting pragmatically.



6. *Reformasi* and administrative decentralisation have generated considerable confusion at the regional level of government. Officials are confused with regard to their tasks and authorities. This weakens government action.
7. The confusion generated by *reformasi* provides opportunities as well: for actions against established elite's interests by aspiring new hopefuls and for initiatives from the grassroots level.
8. New legislation introducing direct elections has made regional government officials more responsive to social circumstances in their region.
9. There is more conflict over land with a higher economic value: e.g. land rich in natural resources or at central and easily accessible locations.

Working from these, I have formulated my research questions. These are formulated as a main research question (question 1) and three additional questions which deal with specific dimensions of the research that the hypotheses bring to the fore:

- 1) ***Has decentralisation influenced the normative dimensions of access to land in the regions of East Kalimantan?*** This question contains several more specific sub-questions dealing with the various aspects identified in the above.

*The legal dimension is considered as*

- 2) ***Which normative systems are applied?*** Unwilling to settle for a clear-cut division between 'official law' and 'non-state normative systems' I aim to provide a more extensive analysis of locally recognized normative grounds underlying access to land. Do they connect and mix and, if so, what does this mean for the outcome?

*The social and political dimensions of the research are problematized as*

- 3) ***Who applies normative systems, why and how?*** Who are the authorities, what are their sources of authority, and to what extent are actors able to shape and influence the norms? As law is a social construct subject to political outlooks and regime changes, access to land should not be considered apart of the general social and political circumstances in which it applies. Hence
- 4) ***What influences do social, economic and political circumstances have on the implementation and observation of land tenure, and which factors explain their role?***

Taken together, the questions' answers aim to meet a variety of objectives. These are:

*Identification and analysis of:*

- the role and meaning of state land law in local contexts
- sources and usage of authority in local contexts

- the factors that make for successful influencing of the normative process
- normative systems and their operations
- the relations between normative systems and the local social, economic and cultural contexts
- mutual relations between normative systems

*Contributing to theory development on:*

- the relation between law and society
- the politics of identity, especially in relation to indigeneity
- the place of negotiation in the legal process

## Multi-level and interdisciplinary research

The regulation of access to land has place at various levels of social and administrative organisation, and cannot be sufficiently grasped by using exclusively anthropological, juridical, political or even public administration approaches. It involves struggles over rules, rights and authority, and is heavily shaped by specific local social, historical and political contexts (Peters, 2004; F. and K. von Benda-Beckmann, 1999; Christodoulou, 1990; Walinsky, 1977:11). Normative systems must be approached as an extensive, multi-level phenomenon that concerns legitimacy as much as challenges authority. This requires a theoretical approach suited to incorporate such oppositions as local versus non-local normativity and daily practice versus the theoretical reality of state law for such diverse actors as families of farmers, village elders, village government officials, customary leaders, regional heads of government, company directors and immigrants. Living at various sites and dealing with access to land at different levels of abstraction, the needs and responsibilities of these actors overlap and influence each other, even though the actors themselves might never meet in person. The concept of access to land and its regulation intersects all these levels and livelihoods, making Marcus' (1995) concept of multi-sited ethnography a highly useful approach. Marcus suggests that one should study a 'lifeworld' within the 'system' of today's interwoven social reality, and use a mobile ethnography that traces a cultural formation across and within multiple sites of activity. Likewise, Appadurai's (1996) conceptualisation of social reality being divided into a variety of 'scapes,' in which specific global cultural flows connect actors in all sorts of relations (historic, linguistically, political, etc.), complements this approach by introducing an ordering in themes and a sense of direction.

Even though Marcus and Appadurai both emphasize the interconnectedness of locations through processes and themes, actual location is still important. Communities in out-of-the-way places (Tsing, 1993:X-XI) at the margins of societal spheres of influence often have local arenas developing along the lines of Moore's (1973) concept of the semi-autonomous social field. Such communities are semi-autonomous in that they are remote and relatively isolated from the controlling mechanisms of higher authorities, but are not beyond their reach. Focusing solely on the village where land is being used would leave out influences that might be

hardly discernible as such in daily life but may gain crucial meaning when the context is broadened to the larger society of which the village is a part. Higher levels of authority, traditional or otherwise, and economic or other networks can be of major importance in daily affairs at the local level. The focus on access to land places emphasis on the (contested) authority of land management. This brings to the fore the question about the role of state law and government influence at the local level, as well as on those of customary authorities. How do these two institutions engage with access to land – and with one another – and are there differences in approach at various levels? Government representation is weak in remote areas, as is the role of customary land tenure in urban centres. What power constellations can be discerned and what influence has decentralisation had on these?

The concepts proposed by Marcus and Appadurai make a comparative approach that takes the process of decentralisation as the cause for diverse results at the regional level a plausible line of action. However, comparison as a technique for socio-legal research has its pitfalls. Critical issues such as equal levels of abstraction, and the matter of looking for ‘most similar’ or ‘most different’ (cf. Kimmel, 2004; Ragin, 1991), as well as the problem that cross-cultural association between elements of culture does not necessarily indicate that the elements evolve together (Mace and Pagel, 1994), easily make for false comparisons. While recognizing these dangers I feel that the method is attractive. First, because research into the effects of legislation almost by definition requires comparison of its effects in various areas to test the premise that law treats all equally. Second, because the interconnectedness of locations that is the core in Marcus’ and Appadurai’s approaches cannot be made visible without comparative reflection. Yet as various scholars have pointed out (e.g. Eriksen, 1991; Moore, 2005b), anthropologists need to use perspectives that allow for a switch between formal models and specific social observations. The ability to alternate between different levels of focus and to come to terms with interconnections is essential to understanding the flows of concepts and the webs of relations in today’s globalized world.

## Research methods

Analysing normativity in a foreign culture and environment can be a troublesome undertaking. Official and actual authority are not the same thing: I hence decided to pragmatically approach normativity as a ‘fuzzy theme’ (Ryan and Bernard, 2003) in which designated authority as well as the actual influence I could discern are combined. In daily affairs, this approach aids in discerning theory and practice and making sense of such otherwise unlikely situations as governance in Krayan (see chapter 6). In studying land tenure regulation, my focus lies on the descriptions individuals gave me as much as on conflict. I relate to Hoebel’s (1961) advice to study ‘trouble cases’ and use those conflicts that took place during my visits as concrete case studies. When, as happened as well, no conflicts were taking place at a site when I was there, Holleman’s (1986) concept of ‘trouble-less cases’ brought relief and I discussed cases from a theoretical point of view with local savants and reverted to examples from the past. A highly relevant undercurrent to the research is the future that individuals envisioned for the normative system they applied. The

analysis of conflicts and conflict solutions through the usage of specific normative systems in the context of reformasi has inspired population groups throughout the nation to pursue the promotion of their individual or group interests before those for the nation. Local normative systems are prominent parts of these, but they are vulnerable to contestation by authorities from outside of the group.

The field research was conducted over several periods: from June 2004 until January 2005, from September 2005 until February 2006, and during July–August 2006 and June 2007. The emphasis lay from 2004 until early 2006, but the intermittent visits in 2006 and 2007 allowed me to keep track of local developments and work on maintaining and accentuating the relevance of normativity in the events I analyse in my writings. Conducting research over four years provided data to show something of the struggles between different sources of authority, and how they fared.

Much of the research was conducted through participant (and non-participant) observation. Living in villages and taking part in daily life as well as ‘being there’ in government offices, drinking tea with officials, are simple yet highly effective ways of coming to grips with what goes on at these locations. The normativity of everyday life is not carefully planned or on the forefront of one’s thoughts and actions, but manifests itself in bursts of relevant activities. No events of immediate relevance may take place in a village for weeks on end, while government officials may have nothing to do but watch television all day (most offices are equipped with numerous sets). More often than not, these matters were not caused by events emanating from within, but had their origins in stimuli from outside: someone would come in with a complaint or an issue, or an instruction from higher officials would suddenly arrive in the office. Participating in conflict resolution in villages was initially a lot harder than doing the same in government offices. The diverse ethnic makeup of East Kalimantan’s population means that Bahasa Indonesia is the main language spoken in government offices. In the villages in the interior, however, local languages are used. Whereas it took some more time and effort to be allowed to sit in on government meetings than it did to be present at the populous and sometimes passionate sessions in the villages, my all-too-willing interpreters would easily become enthralled with the spirit of the discussion and devote more efforts to getting their point of view across than to delivering a translation. Over time this changed as I became more proficient in Paserese and met a Lundayeh who had seen it all and was rarely distracted from his translating tasks. Semi-structured interviews formed the main part of the research methodology, if necessary followed by, often shorter, structured interviews. In addition there were many long conversations – on house porches, in buses, government canteens or at the side of roads – which became interviews once it became clear that my discussion partner of the moment had some interesting data to share.

The various regional newspapers that have been founded since reformasi (Kaltim Post, Tribun Kaltim, Radar Tarakan) proved useful sources of information on events throughout East Kalimantan. As they were a major source of information on the province for the local population as well, they gave me the chance to realise that the maxim “it is in the paper, so it must be true,” holds sway in East Kalimantan as

well. As everywhere, papers there have a certain sensationalist way of presenting news and do not feel obliged to report on less ‘juicy’ details or to follow up an issue once the initial news value had transpired. Land occupations, protests and ethnic mobilizations would often (but not always) make it into the papers, but an important issue, such as the recognition of Lundayeh hak ulayat in Nunukan, went unmentioned. Newspapers were hence a useful additional source of information, but not one to depend upon.

Another source of data were the regional courts of law and their personnel. It proved rather difficult to obtain verdicts through court officials, but many were willing to discuss the application of land law at the regional level and the relationship between official law and customary norms, or to bring me into contact with parties in land cases. These introductions proved highly valuable and meant that individuals were quite willing to discuss their claims, and the court’s decision.

Before setting off for fieldwork, and in the intermediate periods in the Netherlands, I engaged in literature research, later complemented with some limited archival work to check certain historic details. These periods away from the field provided opportunities to deliberate with fellow Indira-researchers, supervisors and other scholars on my findings and their contribution to the project. These spells of discussion and contemplation greatly aided in maintaining direction and consistency.

Presented in an overview, the methods used to answer the various research questions can be divided as:

1	Has decentralisation influenced the normative dimensions of access to land in the regions of East? L, DE, PO, SSI, UI
2	Which normative systems are applied? Ar/Li, L, DE, PO, SSI, UI
3	Who applies normative systems, why and how? PO, SI, SSI, UI
4	What influences have social, economic and political circumstances on the implementation and observation of land tenure, and which factors explain their role? Ar/Li, L, DE, PO, SI, SSI, UI

1.7 Being there: fieldwork locations

Newspaper articles on East Kalimantan highlighted an increase in local politics, a rise to public prominence of *adat* authorities and a rush for the control of natural resources. At the same time studies into the bloody fighting in West and Central Kalimantan, Sulawesi and Maluku indicated that the ethnic and religious differences often stated as the causes were essentially rallying calls to engage support for more abstract economic and especially territorial interests: traditional claims to land. As one of the richest provinces in the state due to its huge reserves of natu-

ral resources, East Kalimantan is located between the problem areas of West and Central Kalimantan, as well as Sulawesi. Like those provinces its population is ethnically and religiously mixed and consists of ‘original inhabitants’ as well as large groups of migrants, but for some reason no territorial conflicts flared here. I found this intriguing: what was the difference with these neighbours, why was their no territorial fighting in East Kalimantan? Had the territorial disputes in neighbouring provinces no effects there?



Gunung Lumut dirt road

Scientific publications on the province mainly concerned its forestry politics and nature conservations schemes, while newspapers and discussion sites provided intriguing rumours and fragments. Groups in East Kalimantan would be on the verge of proclaiming independence for the province while some of its former sultanates were said to have been reinstituted in all their feudal glory. Some regional governments were rumoured to consider expelling migrant groups as a preventive measure, while others were said to be working on schemes to provide indigenous groups with exclusive land rights. If not the end of the province as an integral part of Indonesia, than at least decentralisation appeared to announce a broad diversification of regional politics within what used to be the authoritative framework of central and provincial government.

These circumstances presented a number of initial themes to engage with in deciding research locations within the province. First was the composition of the population. I wanted to involve the issue of indigenous land claims and hence needed to look for locations with a mixed population, either with several ‘indigenous’ groups or –preferably, to be able to engage with developments and discourses of land rights in West and Central Kalimantan- with a mixed population of indigenous and migrant descent. Second, I wanted to explore and contextualize the invoked rights to land. I looked for research locations where a debate over the validity of



various normative systems was being waged in order to study the political dimensions of decisions over access to land. Third, I wanted research locations in which living conditions were a factor of importance. As East Kalimantan has a low population density and relatively large regions, I wanted to work in areas where it might matter whether one lived close to the district capital with its government offices or had to undertake a long journey before these authorities could be contacted. With the capital at a distance, I felt that the communication between government and remote settlements, as well as the authorities invoked in managing access to land in such areas should be included. Related to this is the fourth point, the economic situation at each location. Were economic interests a major factor in the contestation of access to land, or were they secondary to other matters? Most research conducted into the effects of reformasi focussed either on Java or Sumatra, or on the various conflict areas of the time.<sup>17</sup> Wanting to move beyond those and engage with the problem of authority over land in an area beyond the national centre and immediate conflict yet of importance to the Indonesian state, East Kalimantan provided a plausible location.

The regions: Paser and Nunukan.

The two regions where the research was eventually carried out were Paser and Nunukan. I was introduced to Paser through the work of Tropenbos International Indonesia, a nature conservation NGO working in the Gunung Lumut mountain area of the district. A sparsely populated, forested mountain area, the Gunung Lumut Mountains form the northern end of the Meratus mountain range and border the province of South Kalimantan to the east. The foothills of the mountains are the site of extensive plantations that run across a flat plain almost until they reach the Sulawesi Street in the west. The plain has a large and diverse migrant population, while the mountains are mainly populated by small communities of Orang Paser, a group generally considered to be the indigenous population of the area. The Orang Paser claim *adat* land rights both in the mountains and on the coastal plain, and tensions over land exist between Orang Paser, migrants and plantation companies. The effects of these tensions, the settling of land conflicts and the role of the government in the open plain and remote mountain areas are a dynamic background against which to research land tenure practices.

An initial visit to the district made clear that the government was contemplating two major developments with regard to land: the determination of a large nature reserve in the Gunung Lumut Mountains, and the possible recognition of the validity of communal *adat* land claims (known as *hak ulayat* in Indonesian) in the mountains and the coastal plain. Areas in which Orang Paser, assisted by a number of *adat* organisations, were making claims to *adat* land. Furthermore, there was substantial unrest in the population as a considerable part of the district’s territory, some ten percent, was being claimed by a scion of the former royal family (Pak Tur of paragraph 1.1.2). His claim concerned land used by Orang Paser and migrants

17 See for instance Manning and Van Diermen, 2000; Holtzappel, Sanders and Titus, 2002; Aspinall and Fealy, 2003; Kingsbury and Aveling, 2003; Sakai, 2003; Erb, Sulistiyanto and Faucher, 2005.

alike; it concerned plantations, mines as well as public roads. Moreover, district head elections were due and land issues –as can be expected- were to be an important issue.

Like Paser, Nunukan has an ethnically diverse population. The northernmost district of East Kalimantan, Nunukan borders Malaysian states Sabah and Sarawak to the north and west respectively. The coastal region is dominated by the capital of Nunukan city, located on Nunukan Island a few kilometres out to sea from the mainland. This is the seat of the district government and the regional economic centre. A very large part of the population of this area consists of migrants. In recent history, the lowland forests of Nunukan’s mainland were logged over, after which large parts of the area were converted into oil palm plantations. The inhabitants of the lowland areas are mostly indigenous Dayak groups living intermingled with numerous migrants. By contrast, the remote mountainous hinterland of Krayan was deemed too remote by both loggers and oil palm companies. Krayan, the heartland of the Lundayeh (see paragraph 1.1.4), is an area remote from the regional government that is largely governed by local *adat* leaders. The influence of *adat* in the official sphere increased notably when the regional government recognized a Lundayeh communal right to land (*hak ulayat*) throughout Krayan. It was this decision that made me decide to take Nunukan as second research area. Government recognition of *adat* land claims is rare and official recognition of a communal land claim is practically unheard of. This was made clear by developments in Nunukan society at large as well: the decision to recognise Lundayeh *hak ulayat* inspired considerable dissatisfaction among such other groups in the district as claimed indigenous status, and *adat* land rights consequently became a major issue in Nunukan’s district head elections as well. The district got its first active *adat* NGO while I was conducting my research there, showing that *adat* autonomy can be achieved in multiple ways. It was this multiplicity that intrigued me.

Essentially, I felt that circumstances in Paser and Nunukan offered a sufficiently substantial basis for comparison at the level of the district, as well as sufficient variation to provide insight into the normative processes and politics that govern access to land. The following table is a schematic illustration of the two district’s essential characteristics:

	Paser	Nunukan
population	Indigenous (Orang Paser) and migrants	Indigenous (Lundayeh and other Dayak) and migrants
Population living in areas remote from the government	Yes (Orang Paser)	Yes (Lundayeh)
economy	Natural resources (plantations, logging and mining)	Natural resources (plantations and logging) and international trade

Adat land claims	Yes, no official recognition	Yes, official recognition
Adat activism (representatives and NGOs)	Yes	Yes
Large land claims	Yes (sultan's descendant)	Yes (Lundayeh and other ethnic groups)
Land an issue in district head elections	Yes	Yes
Indigenous land rights an issue in district politics	Yes	Yes

As a level of analysis the district is immensely useful in understanding the broader framework in which local developments take place and for putting local considerations in a broader perspective. Yet for looking at the actual processes themselves this level is still too abstract. In order to properly engage with these matters I carried out extensive field research at the village level of society. Engaging with this level meant that a careful selection of sites was necessary in order to include the various normative orders referred to, as well as generate insight in the balance between these orders. In both locations I approached this problem by alternating between the capital –the centre of the capital and the migrant groups of society-, the plains –slightly remote from the capital, with a mixed population of migrants and indigenous groups- and the mountainous hinterlands that are remote and largely inhabited by indigenous groups.

### The villages of Paser

In Paser I alternated between the capital of Tanah Grogot and four villages in or along the Gunung Lumut Mountains (including Kepala Telake, discussed in paragraph 1.1.1). I compared local practice and ideas with government policies and their effects. The mountain villages turned out to be relatively autonomous units where land access was arranged largely independently from the government, although attention was given to those government policies and authorities that were thought to exist. This did not mean these were heeded as intended: part of their value lay in the power they represented and that individuals could apply to further their causes. I selected the villages based on their location, population, normative outlook and economy. I included villages that were remote from the plain as well as ones that were very close to it. Orang Paser villages and mixed communities. Villages where *adat* was the main authority and those where the government village head was of major importance. Poor as well as rich villages. The four communities are discussed at great length in chapter 5.

	Mului	Kepala Telake	Rantau Layung	Belimbing
Distance to capital	Remote	Remote	Relatively close	Close
Composition of the population	Paserese	Paserese, a few migrants	Paserese, more migrants	About half Paserese, half migrant
Normative order	<i>Adat</i>	Government and <i>adat</i>	Government and <i>adat</i>	Government and <i>adat</i>
Strong or weak economy	Poor	Very strong	Strong	Reasonably strong

The district capital of Tanah Grogot, its neighbouring villages with extensive migrant populations and its core function as the centre of the district administration provided the other perspective. In so far as the Gunung Lumut villages introduced me to the daily practice of land access, Tanah Grogot provided the political arena where major land conflicts were decided and new policies formulated. Here Paserese *adat* and official land law engage each other and do individuals field discourses of indigeneity, descent, and the rights of individuals. Not necessarily in defence of their own situation, but also –consider Pak Josef of paragraph 1.1.3- as a discourse into the region’s politics.

### The villages of Nunukan

The interest in the official recognition of *adat* land rights in the population of Nunukan made that I had little trouble in finding relevant sides. Again I alternated between the capital with its concentration of officials and large migrant population and areas that were more remote and had another population composition. This meant that I worked in the villages of Long Bawan and Terang Baru in the remote Krayan highlands, as well as in the villages of Pembeliarang and Kunyit in the low-land sub-district of Sebuk. As Nunukan is sparsely populated and its villages are more or less concentrated in clusters the differences are not as diverse as among those in Paser. The differences between the mountains and the plain, however, are considerable.

In the case of Nunukan the difference with the capital of Nunukan city was further emphasized by the cities’ position as an international harbour at the border with Malaysia. Its trading business make that its economy should be qualified as very strong.

	Long Bawan (Krayan)	Terang Baru (Krayan)	Pembeliarang (Sebuku)	Kunyit (Sebuku)
Distance to capital	Remote	Remote	Relatively close	Relatively close
Composition of population	Dayak Lundayeh	Dayak Lundayeh	Roughly equal Dayak (Agabag and Tidung) and migrants	Roughly equal Dayak (Agabag and Tidung) and migrants

Normative order	<i>Adat</i>	<i>Adat</i>	<i>Adat</i> and government	<i>Adat</i> and government
Strong or weak economy	Strong	Strong	Reasonably strong	Reasonably strong

These ten locations of two times four villages and two capitals form my main locations. From here I visited a number of other nearby villages on day trips that do not need to be included in the list here, but that served to check or confirm findings and hypotheses gathered at the main sides. Even though ten locations is a considerable number, the findings remain limited in that other villages could have been included to further broaden the sample and check the data. As things stand, however, most logical combinations of the factors expected to be of importance in issues of access to land have been included. In both Paser and Nunukan the sites include rich and poor villages, remote and well-accessible locations and populations that are mixed to a greater or lesser extent. Including all these variables made the research an extensive undertaking, but contributes to the inclusiveness of its findings. I feel, therefore, that these findings present an accurate and holistic description of the situations in these two districts at the time of research and believe that they can provide a strong foundation for the analysis of the normativism, politics, and discourses that were engaged in access to land in Paser in Nunukan in the years following the beginning of *reformasi*.

### 1.8 Outline of the book

In this book I explore the discourses and authorities of access to land in two East Kalimantan districts. Whereas national law sees the issue as arranged by official legislation implemented and managed by relevant government officials, land access is subject to other forces, controls and powers as well. Local population representatives, district officials establishing after an individual power base, and non-governmental organisations –local or even national- are all part of this struggle for authority and, ultimately, for access to land. Access to land is a competed right which is argued departing from a variety of authorities that all proclaim the validity of specific rules. In making sense of these, I continually refer back to the research questions by seeking to distinguish the settings, actors, rules and games involved in determining and deciding who gets the land. The book is divided into four parts that each emphasize a specific aspect of the research. The first part, consisting of this chapter as well as **chapters 2, 3 and 4** concerns institutional, background aspects to the research data presented in the rest of the book. **Chapter 2** is a further theoretical study of the relation between land, law, power and the concept of indigenous rights. In this chapter I discuss the role of law and normativism. I ask what law should do, and review literature indicating what it does. **Chapter 3** is a discussion of Indonesian laws pertaining to land and to the place of custom (*adat*) within the legal system. **Chapter 4** concludes this part of the book. Here I provide a

comparative introduction to the province of East Kalimantan and the two districts of Paser and Nunukan, taking into account historical, social and economic factors. After the largely theoretical nature of the first chapters, my focus in the second part of the book, consisting of chapters 5 and 6, is highly practice oriented. I discuss what people actually do, and who these actors are. These two chapters concern the regulation of access to land at the level of the village in rural mountain communities in Paser and Nunukan. My focus is on the interaction between state law and customary systems and the resulting determination of valid rules and authority. The data presented in chapters 5 and 6 concerns mountain communities that are relatively remote from the district centres of government authority. Control is poor, and local autonomy is considerable. In the third part, chapters 7 and 8, I change the focus to the more central areas of the districts. In these chapters I am concerned with the possibilities opened up by reformasi to negotiate authority in the grey zone between state and non-state by alluding to both. In chapter 7, I discuss the coming to the fore of *adat* representatives leading sizeable organisations of ‘concerned supporters’ at the regional and provincial levels of government. As these groups have considerable influence in conflicts over land and engage in dialogues with government officials, my concern lies again with the interaction of state law and custom in determining valid rules. In chapter 8 I highlight the potential for negotiation in district politics and the influence that the district population is able to exercise in Paser. Departing from tensions over land just before the district head elections of 2004, I discuss how land issues influenced the election outcome and how the district head dealt with this. I discuss attempts by some of chapter 7’s *adat* organisations to gain influence in the district government’s dealing with land issues, and governmental efforts to achieve the opposite result. Both sources of authority are applied in unusual and creative ways. In these two chapters the political discourses of authority come to the fore. How is authority argued by these respective parties, and what does it mean for rights to land?

In part four of the book this close intermingling of *adat* discourse, local politics and state authority is further explored as I concentrate on the processual aspects of land rights. In the two chapters of this part I discuss the local impact of two specific reformasi-inspired developments originating outside of Nunukan and Paser, but with considerable impact in the districts’ land matters. In chapter 9 I discuss a land claim made by a descendant of Paser’s former sultan. The restoration of a sultan is a typical reformasi phenomenon, in this case taken up by a local candidate trying his chances. What ensues is not so much a settlement of the claim according to Indonesian national land law, but a tactical presentation of proof and counter-proof and a careful alignment of local powers. The case is taken as far afield as the Indonesian Supreme Court in Jakarta, but its final settlement is a local affair. In chapter 10, I discuss the effects of government studies into the existence of hak ulayat –traditional communal land rights- in Paser and Nunukan. The studies indicate opposite results, but are eventually not followed up in Paser. The local politics, local explanations, interest groups and power holders that are to decide the issue, and the explanations of why the effects of the studies were not fully as anticipated are this chapter’s subject.

**Chapter 11**, the final chapter of the book, builds on the findings of the preceding chapters to provide an answer to the questions raised in chapter 1. What do reformasi and decentralisation, in all their elaborate complexity, mean for access to land in East Kalimantan?



# Land and its users

## 2

The potential of law and identity

“Kalau bangsa kita, Indonesia, walaupun dengan bambu runcing, saudara-saudara, semua siap sedia mati, mempertahankan tanah air kita Indonesia, pada saat itu bangsa Indonesia adalah siap sedia, masak untuk Merdeka” (Soekarno, 1964:13).

### 2.1 Land matters

On the first of July 1945 Soekarno, the soon-to-be first president of the Republic of Indonesia spoke the above words as part of a longer speech. The Japanese government had promised Indonesia independence and many Indonesians deeply cherished the prospect. Soekarno spoke of *Pancasila*, the state philosophy of the new nation, and of the unity the Indonesians would need to demonstrate. Soekarno’s quote translates as:

*“When our people, the Indonesians, with bamboo spears if need be, ladies and gentlemen, all ready to die, defend our land and water that is Indonesia, at that moment will the Indonesian people be ready, prepared for Freedom.”*

In translation the words are as powerful as in Indonesian. Sukarno spoke of a people united, armed only with sharpened bamboo spears and their desire for independence, who together would face the guns and bombs of the returning Dutch army. They would stand and fight, and be killed if necessary, and emerge victoriously as a nation, which he lovingly called “*tanah air kita*” – our land and water. It makes sense to fight for these. Access to land and water as well as the ability to use them are essential conditions for the daily lives of people throughout the world. Yet the fighters with their bamboo spears fought for the abstract goal of an independent state, and not to acquire the bare basics with which to sustain their daily lives. The land they would win would be governed according to national laws to which their individual interests would be subjected. However, in the largely agrarian economy of Indonesia’s rural population, other notions of land rights and access control than those granted by the state often predate the founding of the state and national land law. Inconsistency between local tenure norms and national legislation is an inherent source of conflict in itself, yet when the latter (and possibly the former) is captured by the interests of a national elite, protests against violations of local rights become of little consequence.

In this chapter the relation between three central elements of this research –land, (indigenous) identity and law- is discussed within the Indonesian context before being transposed into a wider theoretical and international setting. Land, a commodity that can arouse deep and powerful emotions, is nearly always as-

sociated with a specific identity; usually the identity of a specific group of owners or an original population. Populations rarely are homogeneous and equal: they are diverse and complex and engage in elaborate social and hierarchical relations. Notably in earlier periods (colonialism, *apartheid*) the rules that control access to land and (il)legitimize its usage reflected such unequal relations, yet these days the emphasis on rule of law criteria (see below) pretty much rules out official structural inequality before the law. In the social contexts of many former colonial nations there is however the issue of righting such previous wrongs. It often gives rise to the question whether a ‘positive discrimination’ favouring those who were slighted by the earlier system, usually the colonized, is in order. In many such instances access to land is a central issue. Should those with an indigenous identity receive preferential rights to land, or indemnifications for past wrong-doings? And, if so, who is indigenous? What criteria can be applied to define who qualifies and who does not? Obviously the neutrality of determining these issues goes hand in hand with the values expressed in the rule of law criteria, but can such an inherently combustible and emotionally-charged issue be considered under the law free from any political agenda? In other words: what can the law provide for, and are there limits to its utility?

## 2.2 Land and law in Indonesian politics: an overview

In 1953, the Indonesian lawyer Supomo (1953:230-1) argued that the Indonesian government would have to do away with colonial pluralist land laws and replace these with a single legal system grounded in the living power of *adat*.<sup>1</sup> A set of regulating principles encountered in *adat* throughout Indonesia would give the new nation’s land law, albeit modelled after Western examples, a solid foundation in Indonesian identity and help establish internal unity and shape the a nation state (cf. Slaats, 1994:110-111; Hadikusuma, 1978:112-137 for an overview). The new state needed unifying elements, but the diverse hard-line political and religious orientations of the various groups that had fought the Dutch did not provide them. The Basic Agrarian Law (*Undang-Undang Pokok Agraria*, hereafter BAL) of 1960 embodied these unifying ideals. It was intended to replace Dutch colonial land law with a new national law that would govern land in accordance with the principles of Indonesian culture but incorporate important modern legal attainments as well. The BAL is an umbrella law for the management of land rights in which social, national and traditional influences are combined to provide a law suitable for the task of managing Indonesia’s agrarian affairs. ‘Agraria’ connotes

<sup>1</sup> Colonial law had different systems for native Indonesians, foreign Orientals and Europeans (see Gautama and Hornick, (1983:4-22) for a concise overview). Regarding land, the *vervreemdingsverbod* (prohibition of alienation, see De Kat Angelino, 1930:527) decreed that land governed by Indonesian *adat* –which was usually unregistered - could not be sold to members of the other two groups. The only way for them, and for the government, to acquire such *adat* land was through dispossession. Based on the *domeinbeginsel* (domain principle) all land not held under Indonesian rights fell to the state, which managed it according to Western land law. The state could thus give out rights to land to third parties. The size of the *adat* lands, and hence the location of their border with state land, was the subject of heated debate between the ‘ethicists’ headed by the scholar Van Vollenhoven on the one side, and industrialists and planters on the other. Eventually the ethicists’ views were for the most part adopted by the Dutch government (see for instance Burns, 2004).

more than land alone. It refers to land, what is on it and in it, and thus takes in rights to natural resources as well (Parlindungan, 1998; Supriadi, 2007).

The BAL’s framework merged different outlooks into a solid national law. Its drafters envisioned that over time *adat* practices would gradually adapt to national law, or be absorbed and replaced by it (Soerodjo, 2003:17-19, Parlindungan 2003:5). In any case, the continued existence of *adat* would not hamper the development of a “just and prosperous society” (Hooker, 1975:27). Landlordism and large-scale landownership would be ousted and the landless masses would be given legal security in accessing land through considerable land reforms (Tjondronegoro, 1991:20). The National Land Agency (*Badan Pertanahan Nasional*, hereafter NLA) was established to carry out land administration on the basis of the BAL.

In these early years president Soekarno maintained national unity by carefully balancing the largest social powers – the army, communist, nationalist and Muslim movements – within government. Behind his figurehead position, however, competing forces in Indonesia’s metropolitan elites worked to shift the balance and monopolize power in a single group. Notably the military and the communists were bitter rivals, as both were growing increasingly organised and confident (see Feith, 1964; Hering, 1992). In September 1965 rumours of a small group of army generals planning to dispose of the president led a group of leftist junior officers to mount a pre-emptive strike and assassinate these generals while attempting to obtain the assistance of Indonesia’s communists. Their coup was swiftly overcome by government troops under the future president, General Suharto. With assistance from local militias, the army now obliterated Indonesia’s communist party and sympathisers. President Soekarno, who was leaning towards the communists at the time, saw his reputation considerably tarnished by this association.

The anti-communist purge impacted land tenure. The implementation of land reform, a spearhead among the reform measures of the BAL, largely came to a standstill as it was deemed a communist element. Anyone arguing in favour of land reform attracted suspicion of being a communist and could well lose his life in the national purge of communism (Lev, 1966:110).

General Suharto, a key figure in putting down the abortive coup, swiftly rose to prominence as the new leader of Indonesia. In 1967 he replaced Soekarno as acting president, and was elected president himself in the following year. Suharto named his rule New Order (*Orde Baru*) as opposed to Soekarno’s preceding rule, henceforth called Old Order (*Orde Lama*). The New Order made it clear who was in charge. With solid roots in the military, Suharto chose to control all other pillars of power by reserving seats for the army in parliament and expanding military influence into all aspects of society. Politically, socially and economically a small elite in Jakarta governed the nation, with firm ties to the strong arm of the army (cf. Vatikiotis, 1998:32-91; Vickers, 2005:142-168).

Suharto, his family and an entourage of associates set about acquiring immense wealth through their placement in the top of the national government. This monopolization of state power saw the implementation of policies that were, as MacIntyre (1991:17) notes, “largely unfettered by societal interest”. Enforcement of the BAL and other national laws was limited and coloured by the



interests of the regime (cf. Lucas, 1997; F. von Benda-Beckmann, 1992) and the impact of its somewhat social content were limited by the determination that Indonesia's forest-lands would be governed by a separate Forestry Law. This law was promulgated in 1967 and the department of forestry was authorised to manage Indonesia's forest-land. The Forestry Law contains no references to the BAL, does not acknowledge it in any way, and is the cause of soured relations and bad blood between the NLA and the forestry department. Moreover, the New Order government continued to regard the BAL as suspect, 'communist' legislation (Tjondronegoro, 1991:24).<sup>2</sup> Implementation of the agrarian reforms stipulated in the BAL came to a standstill. The New Order government used the BAL selectively to serve its immediate interests, but ignored it otherwise.

### Reformasi and the status of adat

Following the 1998 resignation of Suharto as President of Indonesia after widespread protests, farmers reclaimed and reoccupied lands taken over by state and private companies associated with the New Order regime (Lucas and Warren, 2000 and 2003:87-94). In areas throughout the nation, groups considered ethnicity and *adat* as legal sources legitimizing land reclaiming (Peluso, 2005; Van Klinken, 2006). Supporters argued that not only was *adat* a valid right recognised by Indonesian land law, but that *adat* rights were in fact the Indonesian equivalent of indigenous peoples' rights, the validity of which the government was obliged to recognise based on international treaties into which it had entered (see Li, 2001:658; Andre, 2005). Groups argued that indigenous identity entitled them to preferential rights based on the recognition of *adat* rights in national legislation, bringing local identity to the fore as a source of rights. The timing was excellent. For the first time in over three decades of New Order rule the government was unable to quiet dissent and was forced to take account of public demands in order to avoid even greater nationwide unrest.

The 1999 decentralisation legislation promulgated under Suharto's successor, president Habibie, was the result. Among other instructions, this legislation gave regional governments responsibilities in land affairs, thus creating possibilities for land conflicts and their settlements to take on a distinctly local character in which highly specific socio-legal configurations were frequently decisive factors (cf. Thorburn, 2004; McCarthy, 2004). Yet land claims, especially those based on local *adat*, posed intricate problems to the newly empowered regions. Official law does not provide a clear legal ground for a return of *adat* land or payment of compensations, yet such issues are frequently too sensitive and socially combustible to make a purely formal outlook a sensible stance for regional governments. Unclear boundaries between *adat* and state land, as well as vague definitions of the former, add to the difficulties of solving these conflicts (Tjondronegoro, 2003:16, 18). Furthermore, claimed land is often part of plantations or settled by migrants (cf. Acciaioli, 2001; Ananta, 2006), making return a highly problematic issue. Cases

of occupation, crop destruction, arson, violent threats and actual violence by claimants of disputed lands have been known to occur (cf. Suyanto, 2007; Suyanto and Ruchiat, 2000; Karki, 2002).

The 2004 decentralisation legislation that replaced the 1999 laws amended regional government autonomy by further defining regional authorities and increasing provincial government powers. Critics initially feared imminent recentralisation and an increasingly dictatorial new regime, but most adjusted their views as amendments were seen to increase legal clarity and regional stability. With regard to land and natural resources, the new legislation defined the limits of the regions' authority and more hazy issues were transferred to the provincial governments. There is no denying that this curbed regional powers but it provided a potential legal tool to combat misuse of regional resources, although these measures might have moved the problem to the provincial level.

Much legislation pertaining to land or natural resources includes references to *adat* land claims or to the rights of the local population in general although, as is discussed at length in chapter 3, not necessarily in a way providing legal security to such claims. Social debates on the matter of enforcing *adat* rights to land have alternately attracted promises, denial, or disregard from politicians, showing the indefinite status of such claims. Official law itself does not help here. It often lacks in clarity, suffers from overlaps -resulting in departments contesting one another's authority- and is hampered by poor or faulty implementation and proclamation. In land law, this is a problem that has survived the New Order and continues to persist into the present (see Wallace, 2008). Yet this unfinished nature of Indonesian land law does provide a forum for *adat* and issues of indigeneity. The broader context and implications of the engagement of these three factors is discussed in the remainder of this chapter.

## 2.3 Indigeneity in Indonesia: the concept of *adat*

The concept of *adat* plays an important role in Indonesian land tenure. Whereas it translates, strictly speaking, as 'custom' or 'tradition,' it has come to relate to a category of legal rights as much as to the Indonesian equivalent of indigenous communities, which is a frequent -if not uncontested- translation of *masyarakat adat*, or *adat* communities. The two usages -legal and as an identifier- have different origins and give rise to highly different legal positions with regard to land rights.

### Adat as a legal concept

In 1904 the Minister for the Colonies introduced a bill in parliament proposing to introduce a system of codified private law based on Dutch law that was to replace the plural law system of the time. This was strongly opposed by the law professor Van Vollenhoven, who argued in numerous publications against the imposition of 'foreign state law' on the heterogeneous population of the Dutch East Indies. Van

<sup>2</sup> The BAL would only lose this stigma in recent years, after reformasi begun (cf. Parlindungan, 2003:1, 4-5).

Vollenhoven argued that a new codified law system was highly impractical, hopelessly foreign to the population and devoid of links to daily reality in their villages. He believed that the *adat* used by the population was more efficient for their needs and circumstances than new codified law, which he derogatorily termed “lawyers’ law” (*juristenrecht*) could ever be (Van Vollenhoven, 1933 [1905]). This discussion had its consequences for the perception of *adat* in Dutch legal thought. *Adat* gained standing as a normative system in its own right that might potentially be more efficient than Dutch-made law in governing the indigenous population. Van Vollenhoven’s claim gained credibility in the eyes of proponents of codified law through his distinction in ‘*adat*’ in the sense of custom, and ‘*adat* law,’ which pertained to *adat* carrying enforceable sanctions (cf. Sonius, 1981:XLIII), suggesting *adat* law possessed a predictability and neutrality that brought its character close to characteristics of Western law. This view suggests that, similar to Western law, *adat* possesses rules and regulations as definite and clear as statutory law. This is, however, an oversimplification, as the distinction between *adat* and *adat* law is an academic distinction. It was inexistent in Indonesian village life, where aspects of law were an integral and indiscriminate part of *adat*. Van Vollenhoven’s efforts ensured a categorisation of law in the East Indies which included *adat* law. *Adat* hence gained a firm position within the colonial legal system as indigenous law valid for native Indonesians, a position it might well not have had if Van Vollenhoven’s insistence on *adat*’s legal character had not taken place.

Van Vollenhoven maintained that a forced introduction of codified law was unnecessary and impossible. Yet whereas Van Vollenhoven’s descriptive approach of *adat* produced in-depth reports on *adat* rules, this research led Ter Haar –who favoured a more analytical approach– to conclude that formal law and *adat* should be brought closer together as he believed that it would eventually become impossible to maintain a strict separation of *adat* and codified law. There would be “lawyer’s law,” but it had to link up well with indigenous Indonesian law (Ter Haar, 1950:238) and unite the domains of the legislator and that of the village.

In light of this historical discussion it is understandable that plans for codified private law could only be opposed by an existing legal system of similar weight. However, to assume that *adat* is a logical, organized, legal system such as formal law is, ignores some of its most dynamic qualities. *Adat* may be normative and regulating but its figure of justice does not wear a blindfold, nor is the administration of justice its main task. That is maintaining peace in society.

*Adat* is more than ‘custom’ or ‘tradition,’ but it is not ‘law’ in a strict sense. Custom and *adat* experts play an important role in many Indonesian societies. Together they form the core of a decision making body that is optimally adapted to the circumstances of that individual group. Being valid for relatively small and autonomous societies, it is possible for *adat* decisions to encompass a measure of socially specific detail and dynamism that is impossible for a larger system, such as a system of national law.<sup>3</sup>

<sup>3</sup> Clifford Geertz (1983:176) illustrates this vividly with regard to Bali “no two [villages] do things exactly alike; if they find that they do, one of them changes something.” Although this statement might be a bit excessive it shows that changes can be made swiftly and efficiently on such a low level of organization, thus giving *adat* a high level of dynamism when this is needed.

The low level of organization on which decisions are taken makes direct influence by individuals in the process possible, if not mandatory. Decisions are often taken in communal deliberation rather than by *adat* experts alone and hence involve mediation and negotiation rather than the strict application of pre-formulated rules. Hence *adat* is a social system rather than a legal one; its focus is on individuals and their specific relations and in the second place on the rules that may or may not apply. It involves elements of politics and solution-seeking that are foreign to an objective application of law.

As has become clear in the work of various authors of later date (e.g. Koesnoe, 1977; Djojodigono, 1969; Soepomo, 1962; Slaats and Portier, 1986; K. and F. von Benda-Beckmann, 2001), *adat* is continually changing and developing with a speed and agility that could never be rivalled by a system of state law. To confine *adat* to the domain of law therefore does not do it justice. *Adat* goes beyond the mandatory character of law in the Western sense. Although it most certainly includes a normative aspect, it also encompasses the preferable, the possible and the advisable, and is open to negotiation. Compared to state law, this makes *adat* rather hard to understand and predict. Even those recognised as experts in local *adat* may have difficulty in deciding what is to be done. Members of an *adat* community have a reasonably clear, but implicit idea of its rules and their own positions within it, but room is always left for the dynamic presentation of their position. When a community using *adat* is confronted with a system of state law that differs from its own *adat* rules, it is not a given that this community will choose to replace its *adat* by state law. A well-implemented and proclaimed state law system may offer clarity and certainty but lack the autonomy, detail, and practicality that *adat* has.

### *Adat* and identity

The *adat* law concept that Van Vollenhoven defended presented *adat* law as unique to Indonesia and was as such embraced by Indonesian students studying law in the Netherlands (cf. Burns, 2004:236-251) who developed it further along nationalistic lines. After Indonesian independence, the influence of these Indonesian lawyers made *adat* an intrinsic aspect of the ideology of the new Indonesian state. Burns (2004:251) concludes that

*“The adatrecht [adat law] idea had served Indonesian nationalists, by defining the content of their nationhood, and Indonesian administrators, by offering them a rationale for a power state in which the expression of dissent constitutes in itself an anti-social activity.”*

In other words: nationalist usage of the concept reduced *adat* to a national symbol rather than a recognized legal practice, making adherence to *adat* other than that of the state dissenting behaviour. Therefore the concept of *adat* sits uneasily in the framework of state law. It refers to a state-defined, unified *adat* that accentuates the nation’s unity, while the actual diversity of local *adat* is an inconvenient



obstacle that threatens to sit in the way of uniform legislation and government policies. The guardianship of the nation by the state, and thus of all *adat*, equates the government with the highest *adat* authority and the interest of *adat* communities with the common good of the nation (Daryono, 2004; Warren and McCarthy, 2002: 77-79). In this view, recognition of special rights for a small community threatened the rights and interests of the rest of the population. Appeals to local *adat* to sustain claims to land clearly do not follow the state approach to *adat*, but support a view of *adat* that is 'anti-state' and decidedly local in its interests and support (Bowen, 2003: 59-63).

Dissenting from the version favoured and propagated by the state, this view of *adat* became outspoken in Indonesian society following the greater freedom of *reformasi*. Until then, the official stance with regard to today's *adat* communities (*masyarakat adat*) saw them as a burden for the state. 'Isolated' and 'backward' groups in need of government assistance to keep up with the nation's development, they lagged behind in becoming proper Indonesian citizens (Persoon, 1994, 1998, 2002). Popular perceptions, however, contain much more positive associations. Li (1999a:2), writing on upland communities living at the verge of 'normal' Indonesian society, claims that *adat* communities are associated with poverty, ignorance, disorderliness and a stubborn refusal to adapt, but are also seen as free and living in integrity with their natural surroundings. Following *reformasi*, NGOs championing the interests of *adat* communities mushroomed throughout the nation and professed their alternative ideas with a vengeance. They emphasize the positive, green connotations of *adat* (cf. Tsing, 1999; Katoppo, 2000; Li, 2001: 656-8), yet take a tougher course as well. "If the state will not recognize us, we will not recognize the state," said the chairman of Indonesia's largest *adat* NGO –AMAN– provocatively at the organisation's first congress in 1999 (Li, 2003). His message was clear: Indonesia should recognize its indigenous peoples and their customary claims to land and forests.<sup>4</sup>

The choice for communities to join such *adat*-interest is, however, not a self-evident one. Whereas *adat* and its associations swiftly returned to prominence in communities in remote or isolated locations (cf. Li, 2000: 163-169; Acciaioli, 2003: 224-5; Roth, 2006), official government has also gained prestige in *adat* communities. In some areas the government has decision-taking authority in the election of *adat* leaders (Sardjono and Samsedin, 2001: 120-122; Eghenter, 2006: 165-166) and government support lends status to individual *adat* leaders (Sillander, 2004: 309-310). *Adat* and government authorities can complement as well as oppose each other and *adat* authority is not necessarily uncontested even within the local group. Instances are known of communities that claim *adat* disagreeing amongst themselves on what their *adat* is and to whom it gives authority, while opponents argue that an exclusivist explanation of *adat* is not beneficial to all members of the Indonesian community and favours some over others (cf. Samhadi, 2006; M.Cohen, 2001; K. and F. von Benda-Beckmann, 2001 and 2004). Indeed *adat* leaders tend to be senior men, whereas women (cf. Blackwood, 2001; Ihromi,

1994), younger people (Jacobsen, 2002) and immigrants (Schulte Nordholt, 2007) are groups that have considerably less influence with these elders. A return to *adat* government is therefore likely not to be in the interest of such groups.

Its vague definition makes that *adat*, as a social and normative concept, can be reified in a diverse range of forms. Rather than on local concepts of what *adat* is traditionally supposed to be or to do, the focus in *adat* research must therefore be on what it does and is in the daily reality of today's Indonesian society: on the dynamic role of *adat* processes and their effectiveness in championing local interests vis-à-vis the outside world. *Adat* and its personification in specific leaders are where indigeneity as a source of authority is located.

## 2.4 Claiming indigenous land

The nationalist discourse of the state and those confronting it essentially argue from two different approaches. Whereas Indonesian nationalism presupposes an inherently unified nation, the solidarity of which can even be said to predate colonialism, those disputing its uniformity of culture, and especially of power, see a more pronounced diversity within national borders. Such an argument for increased recognition of the cultural diversity approach demands a dialogue on politics and on rights between the national government and these claimants, and a reformulation of power relations.

Patrimonialism and clientelism have been, and continue to be, major social mechanisms in Indonesian society that range from the palace of the president to rice farmers in remote villages. For land users, the conditions of such relations have changed markedly. In the past peasants could oppose their overlord by avoidance: moving away and seeking the protection of another patron showed the vulnerability of rulers and the limits of their power (cf. Adas, 1981; Milner, 1982). Yet with the consolidation of states, centralised national governments and increased social stability, the ability of peasants, who now were national citizens, to move was decreased dramatically. In many developing nations, what Hardin (1968) defined as 'the tragedy of the commons' (gain goes to the individual, loss is shared among the entire community) took place with regard to land tenure. It was up to the national government to manage the resources of the nation for the benefit of the community and prevent overuse (Hardin, 1998:683). This situation combined poorly with a patrimonialist system that distributed the loss among the masses for the benefit of the few. Those who had land did well to hold on to it if they could. Those who did not or who lost it had to hope for an opportunity to (re)gain land.

That opportunity came with the fall of Suharto, which seriously weakened the elite's patronage networks. Gurr (1993) points out the potential for rebellion and critical social movements in minorities if united by social grievances. Indigenous groups throughout Indonesia demonstrated the accuracy of this analysis by forming NGOs championing land rights and (in a handful of cases) by engaging in armed conflict that was ultimately over territory and resources.

<sup>4</sup> The Alliance of Indonesian Adat Communities (Aliansi Masyarakat Adat Nusantara, AMAN) is Indonesia's largest *adat* NGO. Based in Jakarta, it has succeeded in uniting regional *adat* organisations into local chapters. As such, AMAN has considerable grassroots support.

In itself, a piece of land is a neutral item fixed in a certain location. It gains meaning when it becomes populated and used according to a certain, often locally specific, system. Malinowski (1936:376) broached this matter through a broad definition that implies the diversity of land tenure by defining the concept as a relation of human beings to the soil they cultivate and use. Such a broad approach encompassing its social mechanisms, religious assumptions and so on, Malinowski feels, reveals all the 'invisible facts' on which a society is founded. This view emphasizes the inherently communal nature of land, in which individuals can rarely alienate land without the group's consent (Hann, 1998:322), and includes land's economic and political dimensions as a commodity over which changing and unstable factions and coalitions in society attempt to establish control (Popkin, 1979:57). Struggles over land are rarely concerned with land alone. They involve questions of property (Ubink, 2008; Wilmsen, 1989) which is not so much about things in themselves, but rather about those relations between individuals that govern their relations to these things (F. and K. von Benda-Beckmann and Wiber, 2006). A broad approach to the study of land tenure and land rights must thus go beyond the legal situation and take into account social concepts of the land as well. Saltman (2002:1-8) argues that identity achieves its strongest expression within the political context of conflicting rights over land and territory (see also Bender, 1998:324; Fox 1997). People associate themselves with land and derive (part of) their identity from this association. One is from the Netherlands or the Basque country. Geographic origin brings an instant group of fellow countrymen and automatically gives one a political identity. Association with land is not neutral, making that individuals and groups frequently are willing to dig their heels in when defending rights to land with which they have an identifying association. Moreover, land has the potential to fulfil a diverse range of roles as a commodity within differing cultural spheres and situations (cf. Kopytoff, 1986; Dant, 1999:3-5).

Land can be a commodity that can be acquired by all, or only by persons who belong to a select group. *Adat* land, for instance, is often considered as inalienable by members of *adat* communities.<sup>5</sup> Land can hold a religious function as a sacred site or access to land, or a nation, can be limited or prohibited to individuals of other persuasions. Religion can saturate a site with meaning to some, yet make it little more than a tourist spot to others. 'Meaning' of land thus is a complex and subjective value. The presence of ancestral graves can physically mark a group's historic links to the area, but may also be advanced to emphasize local mystical beliefs as to how land and natural resources in the area should be treated. The authority derived from local meaning of land often is not fixed and must be established in relation to such other factors as government policies, the presence of natural resources and population pressure. Relations to land and rights derived from those can yield privileges or even a certain degree of autonomy, often in reference to claims of indigeneity which can provide a legal base.

<sup>5</sup> Likewise, Indonesian law only allows ownership of land for Indonesian nationals.

## Indigeneity and the law

Whereas the nation state as a global form of political ordering is increasingly subjected to the United Nations and a host of other inter-governmental organizations (Giddens, 1985:256), individual global citizens have gained increased possibilities to assert their rights. In the wake of the ever-increasing global sustenance of human rights following the promulgation of the United Nations Declaration on Human Rights in 1948, indigenous peoples rights have developed from local issues into issues of international law. The International Labour Organization's (ILO) Convention 169 of 1989 (and its predecessor ILO Convention 107 of 1957), provides a legal vehicle that is increasingly used by indigenous groups to sustain land claims and political demands for self-determination (cf. Wilson, 1997; Ivison et al., 2000). The United Nations has had a Working Group on Indigenous Populations since 1982, and since 2002 has had a Permanent Forum on Indigenous Issues that functions as an advisory body to the Economic and Social Council (ECOSOC). Strengthened by the ratification of the United Nations Declaration on the Rights of Indigenous Peoples after 144 delegates voted in favour in September 2007, and the declaration of two consecutive Decades of the World's Indigenous People by the United Nations General Assembly from 1995 onwards, the status of indigenous groups has become the subject of increased debate in the context of numerous states.<sup>6</sup> What is noticeable, however, is that the United Nations may take the lead in making manifest the existence and problematic legal status of these groups, but that it is up to individual states to come up with special legislation. The mandate of the Permanent Forum illustrates this point.<sup>7</sup> The Forum is designed to:

- provide expert advice and recommendations on indigenous issues to the Council, as well as to programmes, funds and agencies of the United Nations, through the Council
- raise awareness and promote the integration and coordination of activities related to indigenous issues within the UN system
- prepare and disseminate information on indigenous issues

The Forum itself has no legislative or judicial authorities and whereas the Economic and Social Council does have such powers, implementation of the Council's legislation lies with individual states.

The rise to the fore of indigenous groups and their rights is strongly interwoven with the 'culturalism' (Appadurai, 1996:30) of the late 20<sup>th</sup> century; the conscious mobilization of cultural differences in the service of larger (trans)national politics. The application of culture as a source of economic, political or essentially basic human rights thus became a realistic possibility, over the legitimacy of which growing international consensus was reached. The worldwide development of the indigenous rights debate (e.g. Barsh, 1996, Clarke 2006), the indigenous rights movement (Niezen, 2001) and the discussion on group, or cultural, rights (cf.

<sup>6</sup> The first decade of the World's Indigenous People ran from 1995 to 2004, the second decade runs from 2005 to 2015.

<sup>7</sup> See [http://www.un.org/esa/socdev/unpfii/en/about\\_us.html](http://www.un.org/esa/socdev/unpfii/en/about_us.html)

Assies et. al. 2000), are well documented in an extensive literature. It is striking, however, to note that many ethnic minorities successful in claiming indigenous rights live in such largely homogenized, modern states as Canada, the United States, New Zealand or Australia. Studies of such cases show that success not only depends on an intact and functioning authentic culture and a solid legal foundation, but at least as much on a thorough knowledge of the political, legal and cultural sentiments of the society in which such recognition is sought (cf. Mackey, 2005; Van Meijl, 2006).

An example is the Seminole tribe of Florida, who reached international headlines when they took over the Hard Rock Café chain in 2006. The Seminole initially used the autonomous status of reservation land under United States federal law to set up shop in alcohol and tobacco and to move on, like many other North American first nations, to casino gaming afterwards (see Darian-Smith, 2004). The Seminole Tribal Gaming Enterprises comprises six major casinos and is a major cornerstone of the local economy.<sup>8</sup> The Seminole website emphasizes how their businesses are one of the major local places of employment for non-Indians in the area, thus firmly placing themselves within American society at large next to emphasizing their indigenous status. Seminole consciousness of their role within the greater state is specifically emphasized in a 2005 situation, when the United States' National Collegiate Athletic Association (NCAA) announced that it would ban the use of Indian images in champion games (*USA Today*, 15 May 2005) for being discriminatory. This would remove Florida State University's mascot Chief Osceola, a historic Seminoles leader, from the football field. Members of the Florida Seminole Tribal Council voiced their disagreement (*Washington Post*, 14 August 2005) and asked the NCAA to drop the case as the Seminole were proud of the association with the team and the state of Florida (*The New York Times*, 29 December 2006). The NCAA consequently granted Florida State University a waiver from the policy (*USA Today*, 23 August 2005).

Numerous First Nations and ethnic groups worldwide appeal to the possibilities that (inter)national law – be it through the courts, the United Nations or through other inter-governmental organizations – may provide them in matters of land and autonomy. The Tibetan community in exile, for instance, continues to aspire to an autonomous Tibet. Its leader, the thirteenth Dalai Lama, has addressed the United Nations Assembly, the European Parliament and the United States Congress and has been the guest of numerous heads of state. Even though these actions are unlikely to bring immediate change to Tibet's status in the near future, they help to maintain an international image of Tibet as a nation rather than as a part of China (cf. Sloane, 2002; Goldstein, 1998).

Similarly, the government of Tuvalu, an independent nation in the Pacific Ocean, claims that its entire territory of nine low-lying coral atolls is in danger of being swallowed up by the seas due to rising sea levels. The Tuvalu government states that its entire population of 11,000 therefore consists of eco-refugees and at the time of writing is preparing to sue the United States and Australia – both non-sig-

natories of the Kyoto Protocol – and companies in those nations for damages and appropriate counter measures in the International Court of Justice (Gupta, 2007; Jacobs, 2005). Essentially the Tuvaluans want their entire population to be moved to a non-endangered place, preferably Australia or New Zealand, but have not yet specified whether they will desire special status or even independent status. So far these two nations have refused to assist, while Tuvalu has been joined in its intentions by its neighbour Kiribati and by the Maldives, who face a similar threat (Okamatsu, 2005).

The status of 'indigenous peoples' contains an inherent recognition of primordiality. Regardless of whether this is confirmed in law, indigeneity refers to an ethical and moral position that give its subjects, at least, the rights to live in the area of which they are indigenous. Apart from an association with fundamental human rights, indigeneity thus has a strong political dimension that is fielded in all major ethnic conflicts. The Israeli-Palestinian conflict, for instance, has both sides making claims of indigenous status to the area based on written history, oral history, archaeology, tradition as well as religious sources (cf. Brett, 2003; Bulmer, 1998; Yiftachel, 2002; Regev, 2000; Said and Hitchens, 2001; Whitlam, 1997) in which both sides negate the other's identity as a base for a legitimate claim (Kelman, 2002; Habashi, 2005). The issue of recognition of indigenous status including legal consequences is thus an essential aspect of the debate: a lot is at stake.

## Indigenous rights?

Following the decline of hegemony and an increasingly disorderly world-system, Friedman (1998) argues, new solidarities are wrought. Alternative identifications along ethnic, religious or 'Fourth World' lines lead to cultural politics and political fragmentation, of which indigenization is a possible form. Indigenization sees indigenous populations within state territories begin to reinstate traditions and claim indigenous rights using the global indigeneity network and its international organs. At the higher level of nationalization, on the other hand, national states move from a modernist citizenship model to an increasingly ethnic identity based on historic-indigenous roots. National identity is emphasized as anti-universal and anti-imperialist by new right-wing movements. The two forms have different functions for the state: a level of organisation from which indigenous groups are but a small part, or a unifying whole for those taking a nationalist approach to identity. The two have different goals but both aim to reach them through identifying with others: either fellow-indigenous groups in other states or those with whom one makes up the state. Yet can a universal concept of indigenous people's rights – such as the former requires – be distinguished? Many authors express reservations on this subject. Bowen (2000) argues for a two-stage framework combining a universal notion of group-differentiated rights with multiple, culturally-specific local concepts of people, place and state. He makes clear that the concept of indigeneity refers not only to the perceptibility of a group in a certain identifying light, but comes with notions of rights to place and governance attached. Rather than arguing for "granting a universal legal privilege" to the concept of



Tibetan protests in the foothills at the Indian side of the Himalayas

<sup>8</sup> See <http://www.seminoletribe.com/enterprises/>.

indigenous peoples (p. 16), Bowen emphasizes the importance of including local circumstances in the analysis.

In his provocative and well-known article *The Return of the Native*, Kuper (2003:390) states that the rhetorics of the indigenous peoples movements rest on the assumption that "...descendants of the original inhabitants of a country should have privileged, perhaps even exclusive rights to its resources. Conversely, immigrants are simply guests and should behave accordingly." Kuper points out the similarity of this notion with that of extreme right-wing parties in Europe and elsewhere (p. 390), and its closeness to "blood and soil" ideology that strongly inspires Nazi (*Blud und Boden*) concepts. Moreover, he raises the problem of the history of consecutive migrations in most nations: most people are the descendants of migrants who came to a place at one time or another, making determination of the original population a nearly impossible exercise. The arguments used to justify indigenous land claims, Kuper writes (p. 395), "rely on obsolete anthropological notions and on a romantic and false ethnographic vision." They foster "essentialist ideologies of culture and identity" that may have "dangerous political consequences" (see also Kuper, 2004).

Kuper's critical approach to indigeneity and the indigenous rights movement started a broad debate on the issue, in which he attracted both praise and, more substantially, criticism for his critical take on an essentialist approach to indigeneity (cf. Omura, 2003; Guenther, 2006). The main points of criticism are the differential power relations between parties (e.g. Ramos, 2003), the rather more complex nature of relations between population groups (e.g. Asch and Samson, 2004), the more profound stances of the indigenous rights movement (e.g. Zips, 2006), the need for a relationalist approach rather than Kuper's own, ironically essentialist one (e.g. Kenrick and Lewis, 2004), and the lack of emphasis on social justice (e.g. Heinen, 2004).

If anything, the debate showed the highly complex nature of the concept of indigeneity and the greatly varying purposes it can be used to legitimize. The debate made clear that 'indigeneity' does not equal 'primitive' and that the term has a political charge at least as powerful as its identity properties. In reference to Friedman's alternative identifications, it becomes clear that indigenization and nationalization are poor companions. Whereas the essence of indigeneity problematizes the unifying aspects of the state, the character of the state allows little space for indigenous substitutions to its own identity. The tension between these two in the debate is most visible in the two defining approaches used for 'indigenous peoples.' Participants vary between anthropological and legal constructions of the concept and where anthropology finds problems with the term – as I will discuss shortly – the legal approach offers us a means to definition. Stavenhagen (2002), cited in Saugestad (2004) reports that the United Nations Working Group on Indigenous Populations has identified four principles to be taken into account in any possible definition of indigenous peoples:

- priority in time with respect to the occupation and use of a specific territory
- the voluntary perpetuation of cultural distinctiveness, which may include

aspects of language, social organization, religion and spiritual values, modes of production, laws, and institutions

- self-identification and recognition by other groups as well as state authorities as a distinct collectivity
- an experience of subjugation, marginalization, dispossession, exclusion, or discrimination, whether or not these conditions persist

Although this description leaves much to be desired with regard to clarity and certainty, it does provide an initial basis on which to build. The main concern (Barnard, 2004) is that the term 'indigenous' is theoretically problematic and that it is uncertain whether a common definition can actually be found. Why would the original inhabitants of, say, Australia be given special rights and not those of Europe? And how many qualifying ancestors does one need to be defined as indigenous? Land rights, Barnard believes, should not be given to people because they are indigenous, but the land tenure of disadvantaged ethnic minorities (who otherwise might be called indigenous peoples – see Heinen, 2004) should be recognized by the states governing them because they already own the land.

In practice, however, many 'indigenous peoples' are the same groups whom those in power define as 'primitives' (e.g. Goody, 2003; Li, 1999b; Said, 1989). They may have rights to development assistance – or the imposed duty to 'develop' – but recognition of indigenous land rights is far from self-evident and often contravenes state interests.

Barnard (2006:6-9, 12-13) argues that such opposing definitions make an essentialist definition of indigenous peoples highly problematic, but he does not believe that this weakens the validity of land claims based on indigeneity. Citing Saugestad (2001:306), he agrees with her that indigeneity as a political concept is like ethnicity: an identity that 'we' cannot deny 'others.' As with ethnicity, self-definition and not racial or cultural substance is the key. What this means for indigenous peoples' relations with the state is then another crucial problem.

## The environmental argument

Major arguments in favour of recognizing indigenous rights are social justice and righting previous wrongs, yet a third argument that is of particular interest to the situation in East Kalimantan is the 'green' argument. The "Ecologically Noble Savage" (Redford, 1990) manages natural resources in ecologically beneficial ways that are definitely superior to those used in non-indigenous exploitation. Environmental awareness in environmental resource usage by indigenous groups was already a subject of debate for some time (for instance Wilmsen, 1983; Ellen, 1986). Increased environmental awareness and concern provided the debate with a strong breeding ground, in which the image of the 'primitive' opposing large scale logging and forest destruction formed a popular centre point. The notion of better environmental management by indigenous groups attracted considerable criticism, the crux of which was that such groups used a pragmatic approach to natural resources rather than a considered, sustainable approach (see Ellingson, 2001:342-358; Harmes, 2007). Dove's (2006:198) suggestion that intention and

non-intention in resource management might well be a reflection of difference between modernity and pre-modernity rather than between conservationist and non-conservationist practices points us in this direction as well, questioning the conscious choice for conservation.

In the context of Indonesia, this academic discussion has not (yet) reached the debates over indigenous rights. Proponents frequently field the concept of ecologically proficient indigenous communities (e.g. Bachtiar et al., 2007; Billa, 2006; Kissya, 1993) as an argument sustaining their position on customary rights. These positive, green connotations (cf. Tsing 1999; Katoppo 2000; Li 2001: 656–8), establish bonds with other (inter)national indigenous peoples and environmental organisations through the international indigeneity movement (Niezen, 2001).

Indigeneity is determined within the context of a specific group yet accumulates meaning and discourse in relation to its non-indigenous environment. It is in interaction with this environment, however, that indigenous identity can obtain a preferred position. Whereas minority claims of primordialism in themselves hold little or no value if ignored by the majority, they may be seen in a more favourable light if the claiming group makes an inclusive effort at embedding their status in the social and economical framework of local-indigenous as well as non-indigenous-society. In the international context of the debate it becomes clear that the status of indigenous peoples is considered as one that implies certain rights, for instance rights to land or self-government. The notion is shared in international law, in which a forum for indigenous issues has steadily taken shape. Yet to give legal consequences to the status of indigeneity within a national context remains the privilege on national governments. Maintaining a strong visibility at the international level can generate broad support, but it is at the national level and in the context of local society that decisions are ultimately taken. Identification, argumentation and support hence are highly important features, but opportunities are ultimately created and authorized by law.

These observations have clear consequences for the discussion and implementation of *adat*-based land rights in Indonesia. Obtaining land, a local commodity par excellence, under these conditions requires strong support from forces and discourses outside of the *adat* community. Recognition of *adat* land claims under national land law is difficult, but possibilities exist. What is more important, however, is that the regional level of government, at which local circumstances can play an essential role, can be approached for such recognition. Here the issue of indigenous identity and its potential consequences can be decided as a local issue. At this level the indigenous group can be a sizeable and influential minority instead of a 'primitive' community somewhere at the verges of the nation state.

## 2.5 The role of law

Within the context of the state, it is up to the official authorities to define which indigenous rights apply, produce rules for land tenure within the state's boundaries and promulgate laws to manage society. 'Law' in its most basic and daily

usage refers to rules enforced by an authority, usually that of the state. This does by no means rule out the existence of other normative systems, as is discussed below, but it does suggest a monopolist and supreme quality that puts state authority in a precarious position when allowing space for non-state normative systems. This immediately has consequences for such issues as (il)legality and the meaning and substance of 'rights'. Basically, a right connotes a claim or title that is held under a normative system, official law or otherwise. 'Rights' are excellent material for uncovering and pinpointing tensions. A right under official law is not the same as a moral right, or a privilege according to tradition. Various sources may provide differing or conflicting norms, and seriously complicate consensus on a right's justifiability.

The relation between state law and non-state normativism is often uneasy, with the latter being 'illegal' from a state perspective, but provides outright dilemmas when the state is to judge the validity of rights by considering non-state norms, as is the case with indigeneity-derived rights. The definition of law is a problematic issue as it requires boundaries to be placed between the authority of the state and other authorities, even though all can have compelling power (cf. Griffiths, 1986a:14-18; Moore, 2005a:2). In many situations, the authority of unopposed state law overrules other normative systems, provided it is sufficiently enforced and promulgated. This does not, however, mean that state law is accepted as the most feasible or just system by the population. A practical definition (Otto, 2005:11) sees law as a set of rules of behaviour for people in a society:

- to secure and guarantee their interests
- created on the basis of a certain fixed procedure
- with the intention to make people feel bound by them
- which can be enforced by administrative and judicial institutions [of the state] according to strict powers and procedures, including the use of force

This definition takes law as the exclusive territory of the government. It is an approach that might depend on the authority the government is able to exercise, but that benefits the clarity of argumentation if agreed to on a basis of definition. Civil servants, politicians and lawyers – officials dealing with the administration of the state, and hence in a crucial position with regard to this issue – follow this outlook, thus monopolizing the defining, drafting, and application of law as an exclusive government territory. This view is instrumental to the application to the concept of rule of law, an exact definition and implementation of which is among the challenges law poses to the scholarly community and government authorities respectively (see Kleinfeld, 2006; Kennedy, 2006; Peerenboom, 2004), but which can be said to refer to a set of internationally accepted standards. These include procedural standards such as the principles of legality and the principle of democratic lawmaking as well as such substantive standards as human rights. Control mechanisms exist that check compliance with procedural and substantive elements (Otto, 2008 (after Tamanaha, 2004), Bedner, 2004). Its goals can be summed up as emphasizing the subordination of the government and its officials to the law, equality before the law, efficient and impartial justice, supplying law



and order, and the upholding of human rights (see Kleinfeld, 2006). Böckenförde (1991:29-50) suggests that the rule of law implies that:

- the state is a 'body politic' existing for the benefit of each and every individual
- the functions of the state are to safeguard individual liberty and facilitate individual self-fulfilment
- the state and its activities are organised in accordance with reason, implying recognition of civil rights, equality before the law, guarantee of private property, independence of the judiciary, constitutional government, and clear and definite laws in legislative forms

The formulations of Otto and Böckenförde emphasize a leading role for the state but point out that the government itself is subject to the rule of law as well. This essential feature should prevent both 'rule by law' – as is the case with non-democratic absolute government – and exclusion from the legal process.

Realizing rule of law is, however, a problematic undertaking. In developing nations where custom maintains a strong position and democratic government is frequently still taking shape, at least some of the population may experience the implementation of rule of law measures as going against what is 'just.'

Diamond (1974:257-258) argues that, in civil society, we are to assume that legal behaviour is the measure of moral behaviour. Citing Bohannan's (1968) argument that law is a structured dimension of society that reflects certain institutions, he agrees with Bohannan that in many instances not all of society is involved in this process. Therefore, Bohannan, argues, laws are typically out of phase with society as a whole. Diamond sees a contrast with customary behaviour, which concerns those aspects of social behaviour that are traditional, moral or religious and may well be very different from civil societies' legal (moral) behaviour (cf. Merry, 1995). This argument deals in the first place with legal consciousness rather than with a critique on the application of a legal system. Merry (1990:5) concisely defines legal consciousness as "the way people conceive of the 'natural' and normal way of doing things, their habitual patterns of talk and action, and their common-sense understanding of the world." Thus it refers to common norms and everyday ways of dealing with the law. It does not include broad knowledge of, or a necessary respect for, official legal systems. Especially for those with limited access to education or in states where laws are poorly promulgated, general ideas about law and legality are largely formed by local, often customary, normative systems. Those actions undertaken under national law that influence local arrangements, usually in a negative way, are not necessarily considered as 'law' in the sense of how things ought to be done. Rather, they are associated with power, which is controlled by state officials unsympathetic to, or uninterested in, the problems and arrangements of the people in the village. These circumstances add the following to Merry's definition of legal consciousness: the properties of power and domination (cf. Sarat, 1990), locality (cf. Cooper, 1995) and, possibly, a potential for the creative and dynamic usage of law to fit local circumstances (cf. Pirie, 2006). Linking his observations to the institution of the national state, Diamond

(1974:274-280) voices serious objections to the rule of law. He states (p. 274): "if revolutions are the acute, episodic signs of civilizational discontent, the rule of law...has been the chronic symptom of the disorder of institutions." In his view, political society is based on repressive organised force, which is nonetheless to represent the common interest. Under the rule of law the legal order is synonymous with the power of the state, but what does that mean for the law if the power of the state is questioned by the population? The struggle for civil rights is a response to the imposition of civil law and hence a potential critique of the state's rule of law. As law's substance can hardly be assimilated to morality, a constant friction between official legal rules and popular legal consciousness is a likely outcome to which those in power must provide an answer.

At the fall of Suharto and the end of the New Order the regime was lost for answers and hence replaced. Talk of becoming a 'state governed by the rule of law' has been persistent and frequent in Indonesian society and media (for instance *Kompas*, 11 August 2003, 17 February 2004, 14 August 2008; *Tempo*, 21 July 2000, 4 August 2002, 12 January 2008). But developments do, however, not seem to take place in an univocal direction as government authority decreased in favour of competing normative orders. Rule of law is an ideal-typical situation in which all (legal) actions are subject to the same principle and a broad consensus on the meanings of (il)legality exists. Access to land in Indonesia is, however, governed by competing normative orders that dispute each other's validity. If anything, it is local legal consciousness rather than a trust in, or transparency of, the legal process that sets the stage for the normativity of access to land. Rule of law does not prevail; instead the decision of 'what law is' is made by influential local power holders who may or may not share the legal consciousness of the population. In this context law is not the cornerstone that rule of law theory would have it be; but an arena in which law's authority is the highest prize.

### Law as an arena

Law gains meaning from what it authorises as much as from what it forbids. As such, law and its negation are opposites that define and construct one another. Existence of the one gives shape to the other, making the possibility of transgression a property inherent to all law (Anders and Nuijten, 2007:12). In most nations the medium of state law is applied to define legal and illegal, and to discern offences from outright criminality. State law is widely perceived as intended to indiscriminately manage and protect the individual interests and rights of all the state's citizens of whom, according to the rule of law principle, none is above the law (cf. Carothers, 1998:96-97). Yet 'the state' is an abstract authority that is made concrete by its government, the members of which create legislation that governs society. As such, the existence of state law gives rise to an interest in its counterparts (McC. Heyman and Smart, 1999:1): where law restricts its evasion can be a profitable business, economically as well as for political opposition. Contestation of official law provides a forum to competing forces within society and a rallying point for the government's adversaries. It can be the harsh reality of a last ditch

effort for groups or individuals who see their individual rights violated in the name of the state, but it can also be a strategic position for forces competing with those in government to generate public support.

The fact that it is the government that ultimately claims the authority to define legality and illegality through law promulgated in the name of the state positions law as a field in which normative orders and social action interrelate. It shows that besides as a means of state governance, law can be used to consolidate and expand the control of those in power. In a rule of law situation, the government and its legal actions are subject to the checks and balances of autonomous civil society organisations. Advocacy groups, social movements and trade unions check government actions and serve to contest or legitimate its authority (Carothers, 2002). Nonetheless considerable differences exist between these theoretical considerations and the reality of government. In a rule of law situation, civil society organisations can operate independently from both the ideals of the state, the targets of the government and the operations of political parties. As Diamond (1994:6–11) argues, vocal and critical civil society organisations can be a strong influence on local government and be the source of a new generation of politicians. For such organisations independence from politics and politicians improves credibility, but cooperation is a short cut to direct influence. The question we arrive at, then, is how law is used to legitimise public authority. Both government and non-government organisations legitimise their actions through appeals to legal and moral bases and –alternatively- accuse their opponents of illegal actions. Nonetheless both groups regularly engage in close cooperation, notable at the local level of society. Members of non-government organisations become politicians and government officials join civil society groups. The result is a complex network of interrelated institutions engaged over public administrative authority. As alliances shift and individuals obtain or lose the capacity to exercise public authority, it becomes clear that their operational arena is between state and society. This area has recently attracted steady attraction from social scientists. Lund (2006:673), discussing public authority, refers to groups are active in this area as ‘twilight institutions’; organizations that operate between public and private, between legitimate and illegitimate. In what may well be seen as an attempt at mapping out this area, Abraham and Van Schendel (2005) introduced a model delineating the various positions groups can occupy. Point of departure is a distinction between (il)legal –that what official condones or disproves- and (il)licit –the norms of society.

Spaces of competing authorities		
	Legal	Illegal
Licit	(A) ideal state	(B) underworld/borderland
Illicit	(C) crony capitalism/ failed state	(D) anarchy

After Abraham and Van Schendel (2005:20)

The model is of use here for its conceptions of situations B and C. Considering C, the example of crony capitalism immediately brings the New Order regime and the popular protests against its functioning to mind. Situation B refers to such norms as are approved/condoned by the population yet illegal from an official perspective. One might think of organised bands embedded in society, but also of *adat*. The model illustrates that the government can go against the interests of society, and social forces can oppose the state. As we shall see in chapters 5 to 10, finding a balance between the limits and possibilities of both the legal and illegal, the licit and the illicit, is a delicate affair in which both civil society organisations and politicians alike have to find their way and, again, it is legal consciousness rather than strict interpretation that defines the sides. As O’Donnell (2004:34) writes: “...strictly speaking there is no ‘rule of law,’ or ‘rule of men’. All there is..., is individuals in various capacities interpreting rules which, according to some pre-established criteria, meet the condition of being generally considered law.” What, then, are these criteria? Who is doing the interpretation, and “generally considered law” by no means excludes contestation. The position to decide what is law, and what is not, hence is not just a bone of contention but also a powerful tool in furthering specific interests.

A legal pluralist approach

Rather than focussing exclusively on official law, *adat* or any other normative order that might be invoked, my interest lies in the interaction between such orders. Such interaction can take the shape of competition, as in an arena, but peaceful coexistence is possible as well. The concept of legal pluralism is a useful approach to take here, although it also contains some traps that should be avoided. Legal pluralism is defined as a situation in which two or more legal orders coexist in a social field (Griffiths, 1986b; Moore, 1986). Such situations are frequently associated with colonial systems, in which European colonizers superimposed a new legal structure over existing local normative orders. This led to a situation in which specific law applied to certain groups of people and gave shape to a hierarchy among legal systems that remains largely unaltered in the present. Hooker (1975:1) signals the consequences of such legal system transplantations for present day former colonies as he defines legal pluralism as “circumstances in the contemporary world which have resulted from the transfer of whole legal systems across cultural boundaries.” By which he refers to poor understanding and acceptance of the ‘new law’ by the population as much as to the new law’s regulations that are inefficient and unsuitable to the society. In a broader context, the concept is applied to study normative orders in non-colonised nations as well: Merry (1988) speaks of ‘new legal pluralism’ in this context, in that its field of study is the advanced industrialized nations of Europe and the United States. Notably in this latter context, the concept attracted considerable resistance from (mainly legal) scholars objecting to the idea of plurality in such an essential field of state authority as law (see F. von Benda-Beckmann, 2002), of which Tamanaha’s (1993) article *The folly of the ‘social scientific’ concept of legal pluralism* is a striking example. The point of the concept as I understand and use it,

is not so much to come up with a 'black or white/yes or no' answer, but to discern different normative orders operating at different levels, and possibly in hierarchical relationships to one another, which are defined and dictated by specific local circumstances.

The strongest and best-known concept inherent to the notion of legal pluralism is probably Moore's (1973) semi-autonomous social field, by which she means (p. 720):

*"The semi-autonomous social field is one that can generate rules and customs and symbols internally, but that...is vulnerable to rules and decisions and other forces emanating from the larger world by which it is surrounded. The semi-autonomous social field has rule-making capacities, and the means to induce or coerce compliance; but it is simultaneously set in a larger social matrix which can, and does, affect and invade it, sometimes at the invitation of persons inside it, sometimes at its own instance."*

The advantages of this concept, as Merry (1988:xx) notes, are that the semi-autonomous field is not attached to a single group, that no claims are made with regard to the nature of the orders or their origin (traditional or imposed), and that it draws no definitive conclusions about the nature and direction of influence between various orders. As such, influence can go both ways and the semi-autonomous field contains space for resistance to, and selective usage of, outside legal systems. The subject of unified networks in the work of Anderson and Appadurai that was broached earlier in the section on nation and identity has its counterpart in this section in the work of Galanter (1981). In discussing indigenous law in the United States, Galanter (1981:17) points out that it is not ordered in the shape of clearly bounded and defined groups, but consists of a "multitude of associations and networks, overlapping and interpreting, more fragmentary and less inclusive....Its realm is one of interdependence regulated by tacit norms of reciprocity and sometimes by more explicit codes." This loosening relationship means that exposure to other normative orders as well as to official regulation has increased, and if we continue using the concepts of globalisation and interconnectedness, as done when discussing Appadurai, this means that individual as much as group connectivity is our point of attention. Individuals can introduce new concepts to the group, which opens up space for Macaulay's (1986) concept of 'private government,' by which he means governing done by groups not part of the state government but mimicking its symbols and structure.

This allows for an inclusive approach that takes into account the potential diversity of normative institutions and their representatives and hints at the fluid borders between them. Yet it is this fluidity between official law and other forms of normativity that scholars objecting to the concept of legal pluralism find problematic. Following his 1993 *"folly"*, Tamanaha (2000) has offered a milder suggestion in presenting a 'non-essentialist' version of legal pluralism, in which he proposes (p. 315) to refrain from using the denominator 'law' unless people explicitly do so themselves, and refine its analytical capacities by using 'rule-system' pluralism instead. Essentially this proposition refers back to two questions: what is

'law' for the researcher, and what is it for the researched? Although such a sharp distinction could well introduce an analysis that misses the subtleties and vagaries that connect fluid distinctions, it touches upon an issue of critical importance. There is little point in describing and identifying legally pluralist situations and semi-autonomous social fields without attending to what they do and where they came to be, from a political, social and authoritarian perspective. The fluid connections between different normative authorities are exactly that: connections between *different* authorities and people make use of these differences. Forum shopping between diverse authorities to obtain the best possible recognition of rights is a realistic course of action (cf. K. von Benda-Beckmann, 1984 and 1985; Biezeveld, 2004), as is obtaining recognition of rights from different authorities. Such 'stacked law' (Roquas, 2002:22) strengthens one's position in legally pluralistic circumstances.

Discerning legal pluralist situations is a first and major step in distinguishing authorities, power constellations and sources of legitimacy; aspects which hold influence in the negotiation of the validity and applicability of norms in a given situation. Considering that such negotiations take place in local, customary communities, in the meeting of 'traditional' and state-derived normativities (e.g. Galanter, 1981; Khadiagala, 2002) yet as much in the 'modern territories' of the 'civilized world' and its official law (cf. Nader, 1995:61-62; Riskin, 1996; Ghai, 2002). This makes normativity a dynamic social sphere in which change and continuity are both possible directions, and suggests that the "globalisation of law is leading to new forms of governance in which the relations of national states and their law are renegotiated both internally and in international settings" (F. and K. Von Benda-Beckmann, 2006:10). Resources of law and the choice of authorities have increased, causing an increased complexity of normativity. Authority can go beyond local government and official law, making the debate of what constitutes law and what does not a relatively pointless discussion from a practical perspective. Emphasis should be placed on the actual outcomes of the negotiation rather than on what official law decrees. On what *is*, rather than on what *ought* to be.

### The dilemma of indigenous rights in official law

Indigenous rights are a field *par excellence* to illustrate the statement made above. Claims to indigenous rights are difficult, if not impossible, to maintain where historical developments do not allow for a clear distinction in indigenous and non-indigenous peoples. Colonialism, immigration in general and long-term occupation especially provide such means (cf. Bowen, 2000:13). Their official application is intimately tied to those possibilities available under national law, as well as to the political and power constellations in which they can be placed. This goes for both concrete rights derived from indigenous status, for instance rights to land, as to autonomy in certain areas for local normative systems differing from state law. The situation gives rise to a situation in which adversaries of indigenous rights fear abuse of the legal system through 'invented traditions' (Hobsbawm, 1992): 'inauthentic' customs constructed for the occasion, whereas proponents of indigenous rights distrust the objectivity and sincerity of the state legal sys-

tem in considering indigenous rights (e.g. Speed and Collier, 2000). Two essential problems present themselves here. First, how will the state be able to establish the veracity of claims based on indigenous customs when proof of authenticity becomes necessary? The philosophers Guignon (2004) and Taylor (1991) argue that authenticity of the self is defined in relation to others. As others change, so does a culture's authenticity. Authenticity is hence a fluid concept, the fluidity of which is likely to be very locally-specific. This makes it particularly hard for outsiders to evaluate authenticity as either 'real' or 'fake,' although this is a requirement essential to substantiating a decision taken according to official law. Second: how can official law and customary law be brought into a workable unison? Whereas indigenous rights are about recognizing the rights of an indigenous minority, official law deals with the rights of the entire population. Preferential rights of the indigenous population may harm the human rights of the rest of the population. Again, possible solutions are likely to be locally-specific and pertain to individual ethnic groups. This poses various problems to the mergence of the two systems, as the following examples illustrate.

Among the best-known examples within anthropological literature of an indigeneity-based claim lodged on the possibilities official law is the land claim by the Wampanoag Indian tribe in Mashpee (Massachusetts, United States), which commenced in 1976 and is described by James Clifford (1988). The debate started off as a court case over an area of land that, the Mashpee Wampanoag claimed, was theirs based on official rights the federal government ascribed to Indian tribes. The character of the case changed when the question arose whether the Mashpee Wampanoag actually constituted an Indian tribe.<sup>9</sup> Having intermarried with various other Indian and non-Indian groups over the past centuries, not possessing a clearly distinct religion, political structure or even language, Mashpee Wampanoag tribal identity – an essential condition for qualifying for the land claim – was put into question. The ensuing undertaking of proving tribal identity entailed elaborate historical, legal and social argumentation. It needed to establish independent Mashpee Wampanoag identity as much as position the tribe as US citizens, for which historical parallels played important roles. For instance, Glenn Marshall, the Mashpee Wampanoag chief, published an article (Marshall, 2000) establishing the Wampanoag as one of the tribes who greeted the Pilgrim Fathers upon their arrival on American shores, befriended them, and took part in the first Thanksgiving celebration in 1621. This statement has often been reproduced since, among others by the governor of Massachusetts (*The Boston Globe*, 15 February 2007), and is now a thorough part of Mashpee Wampanoag history. When the Wampanoag agreed not to build a casino or use the status of tribe to take over private land, the Mashpee town council endorsed the request in September 2006. Federal recognition of the Mashpee Wampanoag tribe took place in 2007 (*Fox News*, 15 February 2007; *New American Media*, 23 February 2007).

<sup>9</sup> The status of tribe is of major importance to the Mashpee Wampanoag's case. In the United States legal system tribes have inherent sovereignty through their nation-to-nation relationship with the government. Tribes exercise various powers reserved for sovereigns, such as self-government, determining tribal membership, taxation of its members and the administration of justice (see Ortiz, 2002).

The Mashpee Wampanoag obtained the claimed land through a long and tenacious process, important aspects of which were given shape outside of the court. Negotiations about the construction of a casino and agreements over claims to private properties in the area where at least as important in creating a basis for the claim in the local community as the steady legal development of the case was. The statement that the Wampanoag met the Pilgrim Fathers added to the appeal of the tribe in the national media, thus adding to their image as 'real Americans' rather than 'opportunistic Indians' (see Mackey (2005) for a similar case). Broad support in society, or at least acceptance, can be a major factor for an indigenous claim to succeed.

Proof of rights under official law, however, is of major importance to claims based on indigeneity. A strong example is the discussion surrounding the Treaty of Waitangi in New Zealand and its implications for Maori rights to land, forests and fisheries (cf. Van Meijl, 2006; Orange, 2004). The treaty was signed between representatives of the British Crown and Maori chiefs in 1840. It established a British governor in New Zealand, recognised Maori rights to land and gave Maori British citizenship. Yet the different language versions of the treaty, in English and Maori, differ considerably and there is little consensus on what has actually been agreed upon (see Moon and Fenton, 2002; Laurie, 2002). These inconsistencies have given rise to government actions that have become disputed by Maori groups lodging claims to land as well as to sea rights against private parties as well as against the government. The ambiguities of the treaty make negotiations necessary, which has resulted in settlements between the government and Maori groups in land rights and financial compensation of considerable value as recent as 2008. Here inconsistencies with regard to official law are the base of the claims, and in this manner indigenous rights have a relatively favourable position vis-à-vis official law.

In a situation in which indigenous rights are similarly recognised in official law but no treaty exists, Australian Aboriginal land claims require proof of prolonged usage and cultural ties to the land before a claim can be approved. Neither is easy to establish, making it common for parties to appeal to expert witnesses – lawyers, anthropologists and historians, among others – for opinions. However, as such witnesses can be fielded by both sides opposing expert opinions might be the result and the problem of delivering proof again takes on strong political and social dimensions. The writings of Barker (2004), Christensen (2004) and Choo (2004), who acted as expert witnesses in the Miriuwung Gajerrong Native Title Case, provide strong illustrations of both the problem of (perceived) partiality and its impact on lawyers' dealings with expert witnesses, as well as on such witnesses' unfamiliarity with legal procedures and their role within them. Especially the notion of 'sacred sites' is one that poses problems, for how can 'sacredness' be established by law? The Hindmarsh Island case, which took place from the mid-1990s onwards, illustrates the expansive dimensions of such a problem. Marked for use in the construction of a bridge and marina projects, preservation of the uninhabited island was originally argued by environmental organisations. Aboriginal advocacy groups added their support when archaeological finds at the

site indicated previous settlement on the island. The finds were deemed of insufficient significance to stop the project, but at this point an Aboriginal researcher came forward to report the existence of sacred and secret women's ritual knowledge among the Ngarrindjeri Aboriginals, in which the island had a key role.<sup>10</sup> The government of the time had its own research carried out by a (female) anthropologist, and the secret part of her findings reviewed by female staff. Based on this information the pertinent (male and labour) minister decided to honour the claim of potential desecration and ordered the bridge project to be suspended (Brown, 2003:175-176). Then a group of elder Ngarrindjeri women came forward and disputed the sacredness of the island.

The case entered the official legal system, with avid supporters on both sides disputing the (il)legality of the claim and the problem secret women's knowledge posed for a male minister in taking an informed decision. The problem became notorious when the (male and liberal) shadow minister presented the sacred data in parliament and refused to state how he got them (Gelder and Jacobs, 1997). This resulted in his resignation, but serves to illustrate the deep division over the issue even within government. A government commission researched the issue in 1995, and concluded that the secret women's knowledge was a hoax. Proponents of the claim appealed to the court, but the conservative government of John Howard, who had just been elected prime minister, issued the Hindmarsh Island Bridge Bill explicitly decreeing that the construction of the bridge should go ahead. The Bill caused a storm of protest, not in the least among lawyers (see Clarke, 1997) but the bridge was built. A 2001 decision by the Federal Court of Australia against the developers and the allegations of fraudulence came too late to counter construction.<sup>11</sup>

The Treaty of Waitangi and the two Australian examples illustrate how the more unusual and unclear concepts of the different legal cultures pose problems to a smooth combination. The different concepts and categories are not that easy to translate from one normative system into another and even the usage of specialist witnesses such as anthropologists or historians does not provide a conclusive solution. Moreover, this would confront the judge with the problem of the impossibility of conclusively and convincingly establishing the veracity of all facts. To enter customary claims into an official legal system that evolved dealing with rather different normativity and social settings thus can complicate matters considerably, notwithstanding the best intentions.

It can be argued that the problems arising from the mergence of customary norms with official law might be avoided by creating an autonomous place for custom-

ary norms within specific fields of the wider framework of official law. To a certain degree, attempts at this have been made in various situations. Woodman (1988) writes of state court judges in Ghana and Nigeria who are required by national law to apply 'customary law,' that the judges do so using their own approach. The judges use a 'lawyers' customary law' that differs from 'sociologists' customary law.' Not because the judges do not try but because they lack specific knowledge of norms and social situations and because they are embedded in an official legal outlook foreign to customary law. What the judges come up with is a new hybrid, a creative interpretation of customary law by official judges that is neither fish nor flesh (see also Ubink, 2008:189-192; Tamanaha, 1997:102). Venbrux (1995), in discussing manslaughter in the Australian Tiwi Islands, points out how people differ between *whitefella law* and *blackfella law* (in other words: local customary norms or those of the state). In the case of murder the accepted law is that of the state, which has monopolized violence. Schreiner (1997) describes an Australian case in which a judge, suspecting that the perpetrator of a murder would have to undergo a customary sentence of having his thigh speared upon his return in his community after a term in prison, decreed that the perpetrator had to be punished according to customary law rather than official law. The decision was met with disillusionment among the family of the murdered person. The term for customary punishment had long since expired and rendered any such action impossible. These brief examples show that even when official law is limited to a controlling role over the domain of customary norms alone, its actions can still render the proper application of these norms ineffective.

## 2.6 Concluding remarks

In this chapter I discussed the concepts of land, law and indigeneity from a theoretical perspective, and found them to be thoroughly related in many instances. One cannot hold land without some sort of legal recognition of one's rights, and any such recognition depends on one's qualification under the rules of that legal system. The concepts allow for a considerable degree of fuzziness. If land is neutral in itself, a group can dismantle this neutrality through discourses of relation. 'Belonging to the land' is an argument that is more subtle and certainly more exclusive than 'the land belongs to us', an argument that can be contested and disproved by referring to the relevant law in force. By contrast, 'belonging to the land' implies an identity that is intricately interwoven with that area and that is not a condition that law can disconnect. Emphasizing this connection provides an exclusive argument to a specific group. It sets this group apart from the rest of the population who do not dispose of it and implies a condition that supersedes national law. It thus serves to legitimise that group's rights to the land through norms beyond those of the state and has strategic value in emphasizing the divergent position of a minority within a larger whole. However, in order to increase the chances of acceptance and support of such a special position, such a claim has to relate to values shared by both the group and those whose endorsement is sought. 'Indigeneity' is, in this context, an ambivalent discourse. It can essentialise

<sup>10</sup> Secret/sacred Aboriginal places and associated customary religious and ceremonial practices limit access across gender, age, and level of initiation. This may lead to tension when asked to reveal knowledge in court settings such as public inquiries or land claims (Memmott and Long, 2002:42-43). Spiritual significance of land has been acknowledged by the Australian courts as a ground for native title claims (see Bartlett, 2004:559-561).

<sup>11</sup> James Weiner (2003:169-172), looking at the 'place-making' qualities of the case, argues that it concerns a clash of two ways of making knowledge; the indigenous Aboriginal way versus the agriculturalist perspective of the state. Both perspectives on land vary considerably, creating a confused and unstable situation in which the 'truth' is an uncertain factor.



a group's connections to land, but may estrange that group from the nation's majority. As a potential source of disunion, governments may therefore appropriate the concept of indigeneity and affiliate it to national identity.

Discourses of belonging, of national and indigenous identity hence may all serve to attain control over land, yet to establish such control with a degree of certainty references to law may prove essential. As the discussion of that concept earlier in this chapter made clear, however, law is a problematic concept in itself unless its validity and meaning are undisputed. In the case of Indonesia, the prerogative of the state to control the content and meaning of law is disputed by others who refer to *adat* as a juridical system and a source of rights that precedes and is more just than national law. As central government presence has receded in favour of decentralised authority, the role of local normativity such as *adat* becomes important in formulating as well as controlling the legal field. The interplay between local factors and national law, the potential for legally pluralistic relations and the results of such mergers –or collisions– are what define legal consciousness in a local setting. As an essential factor in determining what is considered legal as well as rightful, legal consciousness can under these circumstances be a major issue in establishing the valid rules of local contexts.

Law –national, official or otherwise– thus is an important factor in establishing access to land, but so are identity, custom, local power structures and local politics. The discourses in which these elements are combined into a valid claim will provide further indications of the functioning of authority over land. Indigeneity, the authority of the nation or the autonomy of *reformasi* are the major directions that have been indicated here. In the following chapters their roles in attaining control over land will be explored at length.

# Laws and regulations

## Official dimensions

### 3

Q: *Whose land is this?*

A: *Mine, and my family's.*

Q: *Do you have any documents stating this?*

A: *No, we do not need those. This area has been in the possession of our people for centuries. Everybody, our neighbours, knows that. No problem.*

Q: *Yet without papers it is state land.*

A: *Of course not.... Well, I have been told so by officials as well. But what can they do? Throw us off? We are Indonesians as much as they are. We are locals, those officials are immigrants. No, we will register the land if they provide good conditions, but it is ours.*

Q: *What would you do, if others get certificates to your land?*

A: *Oppose them, possibly... Go to the NGOs, go to the newspapers... But times have changed. It is no longer Suharto who is in charge. Megawati helped us when she was president. We voted for her but SBY won. Maybe he will help us as well, even though we did not vote for him.<sup>1</sup>*

The above discussion took place in 2005, between a villager of one of East Kalimantan's mountain villages and me. My discussion partner had clear and pronounced ideas of land property: the land in question belonged to him and his family. How this ownership relates to official land law is, however, uncertain. His responses contain three major themes. First, he has some ideas of what formal land law implied: he knew that he had no relevant documents and that registration is an important security. Second, he disagreed with the idea that simply because he did not meet formal requirements the land would not be his. In his opinion, and there are many who hold similar views to him, local traditional adat rights prevail over what a remote government has come up with. Third, he knows (and has experienced) that this reasoning did not stand up to formal right holders during the New Order. Now, however, the New Order has come to an end and a better era has arrived. Or so he hoped.

<sup>1</sup> A discussion about land rights I had in a mountain village in Paser with a local family head. The help referred to consisted of the gifts to the collective village population of a television and satellite dish by a visiting campaign team of Megawati, in exchange for the promise that the entire village would vote for her. The villagers kept their word, but now were under the impression that SBY knew about this and hence might disfavour them for not voting for her?.

Was that wishful thinking, or was he right? In order to answer that question I discuss Indonesian legislation pertaining to land in this chapter.<sup>2</sup> The purpose of this discussion is not to provide an exhaustive overview of land legislation –that would warrant a book in itself- but to provide a basic introduction that includes introductions to the main relevant laws as well as saying something about the political conditions under which they exist. Control over land is divided over a number of legal fields controlled by different laws. Each of these fields and its main laws and relevant recent developments are discussed. First is an introduction to Indonesia's administrative and judicial orders of hierarchy, followed by a discussion of the hierarchy of laws that is necessary to appreciate the competition between government bodies that is distinguished in the course of the chapter. Next are discussions of the four main legal fields relevant to the governance of land: regional autonomy legislation, agrarian law, forestry law, and regional autonomy legislation. The relevance of these fields lies in their relation to the concept of customary –or *adat* – land rights, which form the base of most land claims in East Kalimantan and hence provide the approach to official law. Throughout Indonesia, activists and sometimes legal scholars distinguish a link between the concept of *adat* rights and the notion of indigenous rights used in international law. This debate is briefly discussed in an individual paragraph towards the end of the chapter.

This chapter provides an overview of such official law as can be relevant to people in search of land rights in Indonesia, yet readers will note that very little reference is made to these laws and regulations in following chapters. This is not because of lack of want, but because respondents – government, villagers, activists or otherwise – paid very little notion to the legal apparatus at their disposal. The discussion of these laws hence refers to their potential and not to their actual usage. The conspicuous absence of which at the regional level may be a conclusion in itself.

### 3.1 Administrative and judicial hierarchies

Of the Indonesian government hierarchy essentially five layers are of relevance here.

- 1) The central government (*pemerintah pusat*)
- 2) The provinces (*propinsi*)
- 3) The regions (*daerah*)
- 4) The sub-regions (*kecamatan*)
- 5) The villages (*desa*)

The central government essentially is an amalgamate of parliament, senate, cabinet, president and the various ministries and head offices of non-ministerial government bodies. It is often referred to as 'Jakarta', where all are located. For my purposes the concept of central government is usable as I use it most of the time to

indicate a hierarchical relation. Where required, the usage of 'central government' is abandoned in order to more specifically indicate a government body.

The level of the provinces only occasionally features in this book. First because the emphasis is on the lower levels, but also because the province was rarely referred to in regional politics. An obvious reason for this is that the initial 1999 decentralisation laws largely bypassed the provincial level in favour of the regions and although the 2004 decentralisation laws reverted certain authorities to the provinces, regional governments tend to prefer such direct contacts with the central government as they have established in the meantime. Provinces are headed by a governor (*gubernur*) and a provincial parliament.

The regional level of government consists of districts (*kabupaten*) and municipalities (*kotamadya*). These are equal in status but different in make-up. Municipalities are mainly urban areas centred upon a major town, whereas most districts are essentially rural in character. They are respectively headed by a district head (*bupati*) or a mayor (*walikota*) and a regional parliament. The regional level is one of the levels that have a mayor role throughout this book. The level of the sub-region, on the contrary, hardly plays a role. It is largely an administrative sub-division intended to improve the implementation of measures coming from higher authorities and I rarely encountered its officials or authority during the research for this book.

The village is another essential level. Headed by a village head (*kepala desa*) and village council, it is the administrative level where governance meets people. Where people actually use land, and where the measures and legislation conceived and implemented at the higher levels impact the reality of daily life.

The judicial structure that concerns us here is even simpler as it consists of just three tiers:<sup>3</sup>

- 1) The district court (*Pengadilan Negeri*)
- 2) The provincial court (*Pengadilan Tinggi*)
- 3) The Supreme Court (*Mahkamah Agung*)

Each region has a district court, which handles all kinds of legal matters. Decisions of the district court can be appealed at the provincial court and –should this be deemed necessary- the provincial court's decisions can be brought before the Supreme Court. Court procedures and decisions only have a limited role in this research as many disputes are settled through other mediums. However, courts have an important role in chapter 9.

### 3.2 Law's hierarchy and authority

In recent years, Indonesia's law making authorities underwent considerable changes. In an attempt to explain the status and ranking of legislation, the highest state

<sup>2</sup> The chapter has benefitted considerably from Bakker et. al. (2007) and Bedner and Van Huis (2008). Two papers related to the Indira Project that were produced at earlier stages.

<sup>3</sup> This structure could be expanded to include the procedure for administrative cases, yet as I encountered no such cases in my research I refer interested readers to Bedner (2001).



organ, the People's Consultative Assembly (Majelis Permusyawaratan Rakyat, the senate) issued a decree (number 3 of 2000) that provided an overview of sources of Indonesian law, and a hierarchy defining the precedence of various types of legislation.<sup>4</sup> Article 1 of this decree states that sources of law can be both written and unwritten, and goes on to specifically mention the state ideology of Pancasila as the source of all national law. Not mentioning any other criteria or characteristics of the sources of law, it is broadly assumed that *adat* rules, religious law or such historic sources as colonial Dutch law and Sultanate rule can be sources of contemporary Indonesian law.<sup>5</sup> However, Article 2 of the decree specifies what is to be considered *de facto* law and contains a strict hierarchy of seven levels. Hence, the decree does not define or clarify the status of all types of legislation in existence and leaves the position of, for instance, ministerial decrees unspecified. The hierarchy of legislation consists of:

1. The 1945 Constitution
2. People's Consultative Assembly's Decrees
3. Laws (*undang-undang*) created by parliament and the president following instructions given in (1) or (2)
4. Government regulations replacing laws such as those included in (3)
5. Government regulations drafted following instructions in (3) <sup>6</sup>
6. Presidential decrees issued to facilitate state and government administration
7. Regional regulations <sup>7</sup>

This hierarchy lost its validity relatively quickly, but is important to the understanding of the next paragraph. Four successive amendments to the Constitution from 1999 onwards saw the People's Consultative Assembly lose its designation as the highest state organ and therefore its authority to issue decrees that are binding to both parliament and the president. The hierarchy of laws was revised accordingly. Law number 10 of 2004 on Lawmaking contains a revised order from which People's Consultative Assembly Decrees are removed and laws created by parliament (*undang-undang*), and government regulations replacing such laws, are given equal status.<sup>8</sup> Hence:

1. The 1945 Constitution
2. Laws (*undang-undang*) created by parliament and the president/

<sup>4</sup> Ketetapan Majelis Permusyawaratan Rakyat Republik Indonesia Nomor III/MPR/2000 tentang Sumber Hukum dan Tata Urutan Perundang-undangan.

<sup>5</sup> Personal information gathered from conversations with legal scholars and judges from several district courts, the Indonesian Supreme Court, and various Indonesian universities.

<sup>6</sup> 'Government' in 'government regulations' as referred to in four and five refers to the daily government of parliament and president.

<sup>7</sup> As will be discussed later, most of the legislation that concerns us here falls in this category. Such laws are generally called *undang-undang*, a concept that literally translates as 'laws' or 'regulations' in English, but in Indonesian designates law with this (*undang-undang*) specific status. The term does not occur in any other legislation.

<sup>8</sup> Undang-Undang Republik Indonesia nomor 10 tahun 2004 tentang Pembentukan Peraturan Perundang-Undangan. See Article seven, paragraph one for the revised hierarchy.

- Government regulations replacing such laws
3. Government regulations
4. Presidential decrees
5. Regional regulations

The removal of People's Consultative Assembly's Decrees from the hierarchy was a notable move. The Assembly is responsible for producing a policy outline for the government and for judging the president's performance based on his accountability speech. Whereas voices were raised to contest what was seen as an attack on newly established democratic controlling mechanisms by Law 10/2004, proponents pointed out that the simplification of the legal hierarchy would improve transparency and efficiency. Moreover, the democratically elected parliament's legislation was now second only to the Constitution and whereas the People's Consultative Assembly held yearly meetings only, the parliament (*Dewan Perwakilan Rakyat*) and the president made up a daily government.<sup>9</sup>

Under the regimes of both Soekarno and Suharto, parliament and the president often enacted laws that included provisions allowing the regulation of specific issues through lower legislation such as government regulations and presidential regulations. This method, frequently used by the regime to dispense favours, created opportunities to redirect specific authorities into the hands of trusted henchmen. Law 10/2004 contains detailed procedural instructions on when and how government or presidential regulations can be promulgated, as well as criteria they must meet to counter such abuse. Furthermore, the law contains a specified overview of lower legislation not included in the hierarchy, and the specific authorities of this legislation.<sup>10</sup> The defined lower legislation is to be considered binding law and its validity is confirmed with retrospective force, but only for internal usage by those government agencies that have issued them.<sup>11</sup> In other words, a ministerial decision is binding for the relevant department and all its officials, but not for anyone else.

Before its decree's would be removed from the hierarchy of laws, the People's Consultative Assembly carried out one final act that would turn out to be of considerable future importance to land law, as is discussed in the next paragraph. In its 2003 annual meeting the Assembly prepared for its diminished status by promulgating a decree redefining the status of all 139 decrees it had issued between 1960 and 2002.<sup>12</sup> In practice this meant that certain decrees were revoked, while others remained valid either permanently or until replacing legislation had been drafted and enacted.

<sup>9</sup> Personal communication with members of the People's Consultative Assembly and Indonesian legal scholars.

<sup>10</sup> These are summed up in Article 54 and vary from presidential and ministerial decisions to decisions by the head of the Supreme Court, decisions by regional heads and decisions by the heads of government institutions and organisations.

<sup>11</sup> See Articles 7 and 54 of Law 10/2004.

<sup>12</sup> Ketetapan Majelis Permusyawaratan Rakyat Republik Indonesia Nomor I/MPR/2003 tentang Peninjauan Terhadap Materi dan Status Hukum Ketetapan Majelis Permusyawaratan Rakyat Sementara dan Ketetapan Majelis Permusyawaratan Rakyat Republik Indonesia tahun 1960 sampai dengan tahun 2002.

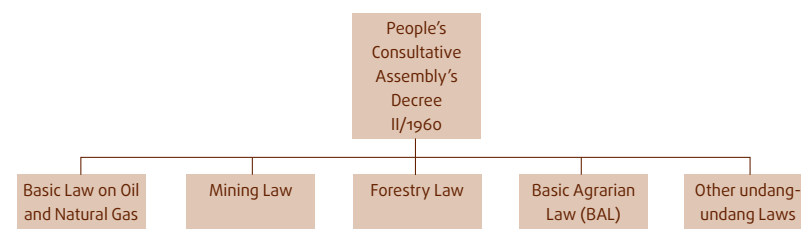


### 3.3 Legal overlap: the authority of People's Consultative Assembly's Decrees

Among legal specialists opinions differ which law is the highest authority on land and natural resources. Whereas the Basic Agrarian Law was developed for this status, dissenting forces within the government and the national administrative apparatus maintain that the People's Consultative Assembly's Decree 2/1960 holds this status.<sup>13</sup> The outcome of this debate can be of considerable consequence for the future of Indonesia's land management as the two readings lead to fundamental differences in the perception of the nation's agrarian legal system.

Consultative Assembly Decree 2/1960 was an outline of a scheme for national development for the years 1961 to 1969.<sup>14</sup> It was drawn up following a 1959 speech by Soekarno in which he instructed his administrative apparatus to compose a plan for the development of the nation and apply Indonesia's natural resources to realize its implementation. When Suharto came into power in 1966, his New Order initially took over the plan but embarked on a looser and more open economic policy in the following years. Decree 2/1960 was not revoked but used as a building block for new legislation.

As the highest legislative organ, it was the task of the People's Consultative Assembly to define the tasks of and provide guidelines for other state organs. Various 'Laws' (*undang-undang*) which were developed over the years and empowered individual ministries thus had to be based on instructions of the People's Consultative Assembly and in many cases on such relevant provisions as could be found in Decree 2/1960. With regard to natural resources management and land rights in general this situation would lead to a legal hierarchy in which the People's Consultative Assembly's Decree had the status of an umbrella law incorporating various laws of *undang-undang* status that pertain to land:



(After Bakker et. al., 2007)<sup>15</sup>

In this reading all these laws have equal standing, from which it follows that the BAL has no authority over regulations pertaining to land in the other laws. Supporters of this view largely come from the various authorities and ministries

<sup>13</sup> Strictly speaking, this decree was issued by the PCA's forerunner, the Provisional People's Consultative Assembly (*Madjelis Permusjawaratan Rakjat Sementara* or MPRS).

<sup>14</sup> *Ketetapan MPRS Nomor II/MPRS/1960 tentang Garis-garis Besar Pola Pembangunan Nasional Semesta Berencana Tahapan Pertama 1961-1969.*

<sup>15</sup> This scheme shows the major basic laws that empower individual ministries in issues of 'agraria'. Other laws, such as the Plantation Law and the Law on Water Resources empower lower level government bodies.

that are empowered by the other basic laws dealing with land and natural resources. To supersede the status of the BAL would be to greatly limit its authority and impose restrictions on the lower legislation it promulgates. From a legal perspective, however, the supporters have a point. Neither Decree 2/1960 nor Law 10/2004 give the BAL the function of umbrella law. Therefore, neither this explanation of Indonesian law nor daily practices in the fields confirm the view that the BAL rather than any other piece of legislation is the main law when it comes to agraria. However, proponents of the BAL as agrarian umbrella law, many of whom are amongst Indonesia's most prominent legal scholars, argue that the BAL has never been fully implemented. They further maintain that whereas individual ministries may be responsible for the practical management of (parts of) Indonesia's land and natural resources, this must be done in reference to, and consistently with, the BAL (e.g. Harsono, 2005:174-175; Gautama, 1993:1; Parlindungan, 1998:21-38; Sumardjono, 2001). Yet championing such an outlook and seeing it translated into government practice are two different things. Laws such as the Basic Forestry Law and the Mining Law empower ministries to manage major (logging and mining) industries, the leases and contracts of which generate considerable income for these ministries treasuries. The National Land Agency in charge of implementing the regulations of the BAL has no such revenues and depends largely on central government funding. Moreover, the NLA is a central government agency (*badan*) under the authority of the minister of home affairs, who has more and other things vying for his attention than just the tasks of one of his agencies. Outclassed financially and hierarchically, the NLA does not dispose of the means to effectively oppose the larger ministries.

The past twenty years have seen increasingly diffuse land management by the government, with tasks becoming dispersed among various ministries, agencies and following decentralisation, lower-level government echelons. As a result, reformers face an entrenched and disunited bureaucracy empowered by a variety of laws. Even though Law 10/2004 introduced legal hierarchy and aimed to establish order, having individual government bodies comply with the hierarchy is another matter. An exhaustive discussion of all empowering legislation relevant to land tenure in Indonesia would warrant a book in itself, and hence is beyond the scope of this study. Yet as I have argued in the above, the main agencies involved in land tenure are the NLA and forestry department. Therefore, the following brief discussion essentially focuses on the BAL and the Forestry Law in the context of the regional autonomy, with the broader framework of other laws pertaining to land and natural resources proffering a wider overview before turning to the changes brought by the decentralisation laws.

### 3.4 Regional autonomy legislation and land issues

Article 33, paragraph 3 of the 1945 Constitution states that the land, and such water and natural resources as exist therein are governed by the state and must be applied for the greatest benefit of the population. Amended several times since *reformasi*, the Constitution's fourth amendment in 2002 saw this Article expanded

with a new paragraph 5 that decrees that more detailed provisions relating to the implementation of the Article must be regulated through the promulgation of further legislation. Unspectacular as such, the paragraph becomes noteworthy upon realisation that Indonesia already possessed numerous legally binding laws, regulations and instructions referring to land and natural resources management well before 2002. A possible explanation for the addition of the new paragraph may lie in the eclectic use of national law under the New Order, when the regime's authority ensured that the application of laws was subservient to the elite's needs. Clarity and certainty of the laws pertaining to these much sought after areas is thus essential in protecting them from opportunistic pillaging by those in power. Although hypothetical, this interpretation of the new paragraph's *raison d'être* serves as an introduction to the spirit of the massive legal reform that was instigated from 1998 onwards. As the new central government was feverishly working on political and administrative changes while simultaneously attempting to dissociate itself from the vices of New Order rule, initial reform measures came across as dynamic but lacking in coordination. Many observers (cf. McBeth, 1999; Soetjipto, 2000; Assegaff, 2002; Lev, 2005) feared that the confusion arising from the novelty of newly decentralised administrative authority would mainly serve the interests of local power brokers. What would be decentralised, they felt, were the vices of New Order government rather than a newly effectuated democratic legal order (Kimura, 1999; Aspinall and Fealy, 2003).

### Regional autonomy legislation

The regional autonomy laws of 1999 and 2004 delegated considerable administrative authority to the regional level of government. Drafted as a reaction to increased regional demands for greater independence from the centralist national government and its personifications in Jakarta, The first set of regional autonomy laws (hereafter RAL), Law 22/1999 on Regional Governance and Law 25/1999 on the Fiscal Balance between the Central Government and the Regions, were promulgated in 1999 and came into force in 2001.<sup>16</sup> An initial and highly important point of critique was the vague formulations of the fields and limits of the regions' new autonomy. With hundreds of regional governments in power throughout the nation, governance in Indonesia gained a multitude of shapes and varieties, which, the central government felt, threatened the clarity of the law as well as the unity of the nation. A restructuring of regional autonomy and a more detailed definition of the authorities of the various levels of government administration were deemed necessary, and came about as two replacement laws for Laws 22 and 25 of 1999: Law 32/2004 on Regional Government and Law 33/2004 on the Fiscal Balance between the Central Government and the Regions.<sup>17</sup>

<sup>16</sup> Undang-Undang Republik Indonesia Nomor 22 Tahun 1999 Tentang Pemerintahan Daerah and Undang-Undang Republik Indonesia Nomor 25 Tahun 1999 Tentang Perimbangan Keuangan Antara Pemerintah Pusat Dan Daerah.

<sup>17</sup> Undang-Undang Republik Indonesia Nomor 32 Tahun 2004 Tentang Pemerintahan Daerah and Undang-Undang Republik Indonesia Nomor 33 Tahun 2004 Tentang Perimbangan Keuangan Antara Pemerintah Pusat Dan Daerah.

The promulgation of the new RAL laws had place during the presidency of Megawati, during which time part of the powerful elite managed to re-establish itself and its influence (see also chapter 1), and caused a stir throughout the nation. Commentators such as Sugiarto (2003) predicted a 'recentralization' and the end of regional autonomy. Although it did not come that far, the laws certainly limited the potential for administrative adventures.

### Decentralising authorities: Law 22 of 1999 and Law 32 of 2004

Law 22/1999 on Regional Governance transfers authorities from the central level to lower levels of government. The authorities decentralised to lower levels are listed in Article 7 as:

- 1) Regional and provincial authorities shall cover all fields of governance, except authority in foreign politics, defence and security, the judiciary, monetary and fiscal matters, religion and authorities in other fields.
- 2) Authorities in other fields as intended in paragraph 1 concern the policies of national planning and macro national development, financial balance, state administration and state economic institutions, human resources development, natural resources utilization, as well as strategic high technology, conservation and national standardisation.

The description of decentralised authorities thus lists the authorities that are not decentralised and remain with the central government rather than provide an overview of what goes to the lower echelons. Additional Articles provide further explanations. Article 9 lists the tasks that specifically devolve to the provincial level (Article 9):

- 1) Authorities in the field of inter-district/municipality cross-border governance, as well as authorities in other certain fields of governance.
- 2) Authorities not yet, or not yet able to be conducted by district or municipal regions.
- 3) Authorities in the field of governance delegated to governors as representatives of the government.

The districts and municipalities, on the other hand, receive far more authorities (Article 11):

- 1) The authorities of district and municipal regions cover all government authorities other than those excluded in Article 7 and arranged in Article 9.
- 2) Government tasks that must be performed by districts and municipalities include public works, health, education and culture, agriculture, communication, industry and trade, capital investments, environmental issues, land issues, cooperatives and manpower affairs.

The relation between districts and municipalities on the one hand and the provincial level on the other is worth taking note of. The RAL practically bypasses the provincial level, whom it assigns few authorities aside from relatively minor tasks. This is a notable division of authorities between the two levels, since the regions were virtually completely controlled by the provinces during the New Order. The change thus is remarkable. Furthermore, the central government receives the possibility of directly supporting individual regions by assigning them specific tasks, financial means, infrastructure and manpower (Article 13), thus bypassing the provincial level, while the hierarchical relationship between provinces and the regions is ended (Article 4 paragraph 2). Law 22/1999 thus provides for 'regional autonomy' in fact as well as in name.

Generally speaking, the role of the central government is considerably more modest than it was during the New Order. Although the central government retains a role in guiding and supervising the regions (Article 112 and 113), its role in the daily management of the regions is thus decreased considerably. Regional parliaments hold legislative and budget powers (Article 21), demand accountability of regional officials (Article 19) and elect the head of the regional government (Article 26). Moreover, regional governments receive the authority to enact their own regulations without having to await approval from higher authorities. It is the task of the central government, more specifically the Minister of Home Affairs, to guard against unacceptable regional legislation (Article 114 paragraph 1). This authority is, however, seriously hampered by the sheer amount of regional legislation that is promulgated, and that caught the Department unprepared. Moreover, regional governments can appeal against such a decision by the Minister at the Indonesian Supreme Court (Article 114 paragraph 4). As this court has a backlog of several years, the procedure will require patience and will be effective only in the long run.

The replacement of Law 22/1999, Law 32/2004, combines two tendencies. These are, firstly, a limitation of the regions' autonomy in favour of the provinces and, secondly, greater democracy at the regional political level. Essentially the division of responsibilities between the central government and the lower echelons as set out in Law 22/1999 remained unchanged.<sup>18</sup> However, the districts and municipalities lost much of their administrative independence to the provinces. Articles 13 and 14 of Law 32/2004 list the regions main administrative responsibilities, while Article 11.2 states that these must be shared with the provinces. The hierarchical relationship is not officially reinstalled, but as Isra (2007) points out, provincial governors hold decentralised central government authority to, among other things, coordinate, monitor, and supervise the districts and municipalities (Article 217c in conjunction with Art. 10.5b). This means, for instance, that provincial, district and municipal regulations regarding the regional budget, taxes and revenues should be evaluated by the relevant minister and the governor of the province (Art. 185-6, 189) before they can be implemented.

<sup>18</sup> Article 10.3 of Law 32/2004 cites the same responsibilities remaining with the central government as Article 7 of Law 22/1999 had.

Law 32/2004 promotes regional democracy by giving more responsibility to the position of the regional head. Articles 56 to 67 provide guidelines for the direct election of regional heads by the population instead of being appointed by the regional parliament (Article 56 to 67). This change greatly increases the population's influence in the governance of the area. Moreover, the central government gets the authority to suspend a regional head if he is sentenced for –among others– corruption, terrorism, subversion, threatening the state security or when sentenced to more than five years in prison for other reasons (Article 29 to 31). As members of the regional parliament, who are elected directly as well and can also be subjected to criminal prosecution, and the regional head together make up the regional government, this means that Law 32/2004 made this level of government accountable to both the regional population and the central government.<sup>19</sup>

### Regulating finance: Law 25 of 1999 and Law 33 of 2004

Regional governments required means to carry out their new tasks. Article 8 of Law 22/1999 decrees that the transfer of authorities will be accompanied by financial means and provides the regions with the authority to generate their own revenues. The second RAL law, Law 25/1999 on the Fiscal Balance between the Central Government and the Regions, elaborates the new financial relations between the central and regional governments.

Regions get their income from two main sources: the national state and regional revenues. The state provides a General Allocation Grant (*Dana Alokasi Umum*, Article 7) to each region, which accounts for 25 percent of the national budget. This grant is essentially an inter-governmental fiscal transfer based on a fixed sum that is increased by additional funding per region in the form of a Special Allocation Grant (*Dana Alokasi Khusus*, Article 8) to be used for specific purposes. Critics (for instance (Colognon, 2003:93) were quick to note that this system generates inequality between regions. The General Allocation Grant and Special Allocation Grant are mainly funded through income tax derived from the exploitation of natural resources. Regions exploiting natural resources do, however, receive a fixed percentage of this exploitation. Resource-rich regions are thus less dependent on government allocation than resource-poor ones to begin with, but the calculation of a region's General Allocation Grant does not take this factor into account. In fact economically viable regions, who contribute more to the funds, receive a larger share than less economically viable regions (Jaya, 2002:46).

The fiscal RAL did not provide regional governments with increased powers of taxation, although regional governments were supposed to become less dependent on the central government and specific types of regional revenues are listed in Article 3.<sup>20</sup> To provide for this, the central government passed Law 34/2000 on

<sup>19</sup> On the position of members of the regional parliament see Law 4/1999 on the Composition and Membership of the MPR, DPR and DPRD (*Undang-Undang Republik Indonesia No. 4 Tahun 1999 tentang Susunan dan Kedudukan MPR, DPR, DPRD*) Articles 3 and 25.

<sup>20</sup> These are: Original Regional Revenues (*Pendapatan Asli Daerah*), the Balance Fund (*Dana Perimbangan*), Regional Loans (*Pinjaman Daerah*), and Other Legal Revenues (*Lain-lain Penerimaan yang sah*).

Local Taxes and Charges.<sup>21</sup> Essentially, the central government collects and partly redistributes high-yielding taxes based on Law 25/1999, while Law 34/2000 provides a wide vista of smaller taxes for the various regions to implement.<sup>22</sup> These greater taxing revenues will, however, not serve to lessen the economical gaps between rich and poor regions. East Kalimantan, for instance, has an extensive and varied natural resources industry, as well as numerous luxurious hotels in its main cities to accommodate those involved in the international natural resources business. The province of Nusa Tenggara Tengah lacks both. Increasing the tax on hotels there will not yield anything close to what those in East Kalimantan will.

Law 34/2000 also provides regional governments with the authority to create their own local taxes, provided they meet a number of set conditions (Article 2.4, see also World Bank, 2003b:39):

- a) Have the character of a tax, and not redistribution.
- b) Tax objects found in the region, with little mobility outside of it.
- c) Not conflict with the public interest.
- d) Not tax an object already taxed by national or provincial taxes.
- e) Have revenue potential.
- f) Not have an adverse economic impact.
- g) Be fair, and take the population's ability to pay into account, and
- h) Be environmentally sustainable.

The relatively vague and broad taxing powers provided by Law 25/1999 and Law 34/2000 led to a torrent of regional regulations implementing new taxes that were at times interesting and highly original. The city of Bogor in Java, for instance, introduced a tax on the import of goats, the South-Sumatran province of Lampung an advertisement tax on Coca-Cola bottlers (World Bank, 2003b:39). As stated in the previous paragraph, such regional legislation can be appealed by the central government, but this is a procedure that frequently takes years.

Law 33/2004 on the Fiscal Balance between the Central Government and the Regions largely confirms the relation between the central government and the regions as set out in Law 25/1999, but introduces a few changes. The main changes of note here are an increase in the General Allocation Grant budget (Article 27 paragraph 1), the provincial share of the dues on natural resource income paid by the regions to the government is increased, and the provinces gain greater influence in the redistribution of allocation funds flowing back to the regions. The influence of the provincial government hence is re-established financially as well.

The financial difference between regions is addressed in several ways. Most interestingly, regions with a negative fiscal balance will receive the General Allocation Grant as long as their negative balance does not exceed it. Once this happens, no allocation money is provided (Article 32). In other words, resource rich provinces with considerable income will not receive allocation funds once their

own income exceeds the basic sum. As Brodjonegoro (2004:9) points out, the decision to implement this measure is a rather brave one as it makes it unattractive for resource rich provinces to increase their revenues beyond a certain amount.

### Impact at the village level

A major change generated by the RAL is the abrogation of Law 5 of 1979 on Village Government by Law 22/1999.<sup>23</sup> The 1979 law on village government had introduced a Javanese model, the *desa*, as the basis of village government throughout the nation. This model clashed with local *adat* governance of the village and was experienced as an unwelcome intrusion by those preferring their own *adat*, although it provided opportunities to induce change for those opposing custom. Following the law, local government representatives were installed at the village level with largely the same tasks as the *adat* leaders carried out. The law on Village Government thus introduced a competitor to *adat* that made it possible to substantially weaken, or overrule, the influence of its leaders. Law 22/1999 contains a change of outlook. It defines a village (Article 1 under o) as:

*An undivided legal community with the authority to govern and regulate the interests of the local community on the basis of local origins and customs (asal-usul dan adat-istiadat) which are acknowledged in the national government system and is [hierarchically] positioned below the district level.*

The acknowledgement of the existence of regulating origins and customs in this definition provides leverage for *adat* authority at the village level. This is further elaborated in Article 99 which states that the scope of village government can be based on the rights of origin of the village, while Article 111 paragraph 2 states that all district regulations must take the rights, origins and traditions (*hak, asal-usul, dan adat-istiadat*) of the village into account. The RAL thus gives the position of the traditional authorities of the village a significant boost *vis-à-vis* the official authorities that the 1979 law on village government introduced.

The RAL gives villages considerably more financial autonomy as well. Whereas before village finances were managed by the village head—which gave rise to many instances of corruption and embezzlement—Article 107 paragraphs 4 and 5 decree that the village head and village council—a largely powerless institution before—together decide upon village finances. The head of the district where the village is located provides a guideline for village finances, but this is no longer binding. The team of village head and village council has the authority to draw up village regulations, which are nothing less than village-level legislation. These may not go against higher legislation but otherwise give the village considerable autonomous powers. This is a considerable break with the previous system in which the village head was mainly supposed to carry out instructions from higher authorities. Both village head and village council are elected by the villagers, whereas before

<sup>21</sup> Undang-Undang 34 Tahun 2000 Tentang Perubahan Atas Undang-Undang Republik Indonesia Nomor 18 Tahun 1997 Tentang Pajak Daerah Dan Retribusi Daerah.

<sup>22</sup> For instance on parking, water usage, restaurants, hotels and billboards. Provinces have the right to tax motorised vehicles and fuel (Article 2).

<sup>23</sup> Undang-Undang Nomor 5 Tahun 1979 Tentang Pemerintahan Desa.



the head was appointed by the district government. This means that the village government has to account for its actions to its fellow villagers and runs the risk of not being re-elected or even removed from their function if their performance fails to convince. Yet the village remains a part of the larger administrative apparatus of the district and the state. Article 110 of Law 22/1999 stipulates that the executive and legislative institutions of the village must be involved in the planning, executing and supervising of higher-level government development projects, although it decrees that such co-operation can only be required when a district regulation considering the interest of the village community, the village authority, the swiftness of implementing investment, environmental protection, or harmony between the interest of the locality and the general interest require it.

When Law 32/2004 replaced Law 22/1999, some changes were made to the position of the village. With regard to the implementation of village government and the possibilities for *adat* authority, Law 32/2004 still contains the Articles of Law 22/1999 discussed above that acknowledge the existence and possible influence of *adat*.<sup>24</sup> However, the new Article 2.9 curbs a return of *adat* influence by stipulating that the state respects and recognises the unity and rights of an *adat* law community, if it is in accordance with the development of society and provided the *adat* can be said to still be ‘alive’: adhered to by the community. The Article does not stipulate who is to decide the condition of *adat*, but it is likely that any adjudication is going to be performed by outsiders, with the final decision probably resting with the district government or higher authorities.<sup>25</sup>

### RAL and control over land

The introduction of the RAL from 1999 onwards caused confusion as well as opportunistic interpretations of the new regional authorities. This is most visible in the forestry sector, as district governments applied several new Government Regulations<sup>26</sup> and the decentralized authorities of Law 22/1999 to contravene the monopolist control over forest land of the Department of Forestry and begin giving out small scale logging concessions themselves. Within days of the coming into force of the 1999 RAL, forces within the central government effectuated a check on the regions’ authority over land. This was Presidential Decision 10/2001 on the Realization of Regional Autonomy Regarding Land Issues.<sup>27</sup> This decision instructed the preparation of new legislation regulating the authorities of the regions in land management, and decreed that until such legislation was available authority re-

mained with the NLA. This decision failed to make much impact in the heyday of regional autonomy, not in the least because its validity would soon be disputed.<sup>28</sup>

The legislation ordered in Article 1 of Presidential Decision 10/2001 followed two years later as Presidential Decision 34/2003 on National Authority in Land Issues. It orders the NLA to revise and refine the Basic Agrarian Law in accordance with National Assembly Policy Decree IX of 2001 on Agrarian Reform and Management of Natural Resources<sup>29</sup>, and to develop an inclusive land management and information system. Then the instruction goes on in Article 2 to redefine district and municipal authorities with regard to land to a limited set of powers:

- a) issuing location permits
- b) land clearance for development
- c) settlement of disputes over farmed land
- d) settlement of disputes related to compensation and aid money in land clearance for development
- e) determining subjects and objects of land redistribution, as well as determining compensation for land exceeding the maximum permitted size or owned by an absentee landlord<sup>30</sup>
- f) determining and settling problems related to customary land (*tanah ulayat*)
- g) granting permits to open/develop new land
- h) spatial planning

As with Presidential Decision 10/2001, one can question the actual validity of this instruction adding to higher legislation. Although the actual impact of the instruction remains unclear, various regional governments have implemented it while officials of both the NLA and the Department of Forestry have been known to refer to it when disputing actions carried out by regional government officials.<sup>31</sup>

### Impact on governance

The regional autonomy legislation effectuated a new, complicated relationship between various levels of government, agencies, and ministries which all had certain authorities over land. This led to much confusion, not in the least because a reshuffle of the hierarchy of the nation’s laws was taking place simultaneously (see paragraph 3.3 hereafter). The dust was somewhat settled by the promulgation of the 2004 RAL which curbed the regions’ independent interpretation of their powers somewhat and did much to clarify relations –fiscal as well as regarding authorities- between the regions, the provinces, and the central government.

<sup>24</sup> However, the Articles have been given other numbers. Article 99 of Law 22/1999 became Article 206 in Law 32/2004. For the other Articles: 107 (212), 110 (215) and 111 (216).

<sup>25</sup> government regulation 72 of 2005 on the Village (*Peraturan Pemerintah Republik Indonesia Nomor 72 Tahun 2005 Tentang Desa*), which is the implementing regulation for Law 32/2004 insofar as it concerns this subject, contains in Article 1 paragraph 5 the stipulation that *adat* in the village can be implemented by the village government as long as it does not contravene the system of government of Indonesia.

<sup>26</sup> Government Regulations 6/1999 (see page...) and 62/1998 (*Peraturan Pemerintah Nomor 62 Tahun 1998 Tentang Penyerahan Sebagian Urusan Pemerintahan Di Bidang Kehutanan Kepada Pemerintah*).

<sup>27</sup> *Keputusan President Republik Indonesia Nomor 10 Tahun 2000 Tentang Pelaksanaan Otonomi Daerah di Bidang Pertanahan*.

<sup>28</sup> The validity of this presidential decision would soon be outdated by the People’s Consultative Assembly’s Decree 3/2000 (see page...), which defined the hierarchy of law in Indonesia. A presidential instruction cannot overrule an *undang-undang* law.

<sup>29</sup> See page.....

<sup>30</sup> Both are illegal in Indonesia.

<sup>31</sup> Personal communication by regional government civil servants as well as staff of NLA and forestry offices.

However, the authorities of the regions pertaining to land are largely depending on the positions of the NLA and the Department of Forestry: two large and powerful institutions that have been engaged in a struggle for control over Indonesia's land for decades. The regions are a new party in this competition and one whose main weakness -its diversity- is its main strength as well: controlling what goes on in the hundreds of regions is a close to impossible task for the NLA and the Department of Forestry. Even though the authorities over land that the RAL and related legislation delegates to the regions can be disputed by these central agencies, enforcing their own authority is another matter.

### 3.5 The Basic Agrarian Law and related legislation

Upon its inception in 1960, the BAL was among the first national laws to be promulgated in the young republic and its contents reflect the turbulent times of newly gained independence. Full of aspirations and symbolic values, the BAL's main strength are in its nation building potential rather than its direct applicability. A 'basic' agrarian law, the BAL was intended as an umbrella law providing a framework for a national system of land legislation. It does not contain many elaborated stipulations, but rather provides principles according to which implementing legislation was to be formulated.

The BAL has a distinct nationalist outlook. Article 1 decrees that all of Indonesia's territory as well as the natural resources it includes belong to the united Indonesian people, while none but Indonesian citizens can have an ownership right to land (Article 21). The state is the manager of the land (Article 2), but should carry out this task with a distinct social outlook. Article 6 states that all rights to land must have a social function, implying that collective rights supersede individual ones, while Article 7 decrees that the general interest should be protected by limiting large landownership. The BAL instructs the establishment by law of a maximum size of land property (Article 17), and the formal registration of all land tenure to guarantee its certainty (Article 19). Article 9 stresses that all Indonesian citizens, men and women alike, have an equal right to land to provide for their needs. Nonetheless the interest of the state is paramount: the government has the authority to withdraw citizens' land rights if this is in the national interest (Article 18) – although a suitable indemnification should be paid and the decision must be in accordance with the law - in which case the land reverts to the state (Article 27).

The BAL's drafters aspired to develop a uniform national land law that honours Indonesian traditions, which, for land, come to the fore in the nation's many and diverse local *adat* systems. Article 5 states that the agrarian law governing land and water is *adat* law, whereas Article 3 confirms the validity of communal (*ulayat*) *adat* land rights. However, the actual impact of these Articles is not so straightforward. Article 5 continues by posing the limiting conditions that *adat* may not conflict with national interests or those of the state, 'Indonesian Socialism', other regulations in the BAL, or other laws. Article 3 prescribes that the effectuation of *ulayat* rights must take place in such a way as to be in accordance with national and state interests and may not be at odds with other legislation. Recognition of *adat*-

based land claims thus becomes possible only if no other legal claim is made to the land, and might be annulled if the limiting conditions of Article 5 require this (see also Haverfield, 1999:51-4).

Perhaps the most essential point for this research is that the BAL leaves the meaning of *adat* unclear. Budi Harsono (2005:179), one of the original drafters, writes that in the BAL *adat* law refers to 'the original law of the group of native Indonesians', a diverse and ambiguous group.<sup>32</sup> Yet, as Lev (1973; 1985:71-71) shows, the role of *adat* in Indonesian legislation during the forming years of the state was one of legitimization of the new state rather than of recognition of local custom. The BAL opposes colonial law, historic aristocracies as well as *adat* pluralism in that it only allows for those *adat* claims that fit the nation's new legal system. It does not safeguard *adat* rights in their customary form, but offers a solution for bringing them into line with modern national land law. In this way the BAL contributes to the appropriation of the concept of *adat* by the state. It allows *de jure* recognition of *adat* land claims after re-identifying the claims as private rights in line with national land law.

Formal recognition of a land claim requires registration of the plot by the National Land Agency (*Badan Pertanahan Nasional*) This agency registers land titles to individuals as one of seven private rights, defined in Article 16 of the BAL. There are four primary land rights: the right of ownership (*hak milik*), exploitation right (*hak guna-usaha*), building right (*hak guna-bangunan*), usage right (*hak pakai*), and three secondary land rights: lease right (*hak sewa*), exploitation right (*hak membuka tanah*) and the right to collect forest products (*hak memungut-hasil-hutan*). The BAL allows for the creation of additional land rights by new laws, and in 1974 a state management right (*hak pengelolaan*) and temporal usage rights derived from subsided *adat* rights such as the sharecropping right (*hak usaha-bagi hasil*), and a right of temporal occupation (*hak menumpang*) have become accepted as rights to land not listed in the BAL.<sup>33</sup>

For one specific category of *adat*, rights recognition is particularly problematic. *Hak ulayat* land rights refer to a communal right, and hence cannot be registered under a system that only allows for individual rights. Article 3 of the BAL recognises *hak ulayat* as valid land law "in so far as it still can be said to exist", for the determination of which no criteria are included. The BAL does not contain a definition of *hak ulayat*, but seems to conceive of it as a usage right of land, whereas many communities that claim *ulayat* rights actually conceive the claimed land as communal property and hence as an ownership right. Claims of *hak ulayat* were the subject of regulation 5/1999 by the Minister of Agraria/Head of the National land Agency entitled "Solving the Problem of *Hak Ulayat*".<sup>34</sup> This regulation, its legal position and its impact are discussed at length in chapter nine.<sup>35</sup>

<sup>32</sup> "Hukum aslinya golongan pribumi".

<sup>33</sup> Decision of the Minister of Internal Affairs No. 5/1974

<sup>34</sup> Peraturan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional Nomor 5 Tahun 1999 Tentang Pedoman Penyelesaian Masalah Hak Ulayat Masyarakat Hukum Adat.

<sup>35</sup> Significantly, as Fitzpatrick (2007:137) writes, *hak ulayat* is not listed as a right that is converted to statutory title by the BAL.

Land registration is instructed in the BAL in order to provide claimants with a certificate stating their right to the land and thus to create certainty regarding the legal status of land claims. The total percentage of registered land is unclear, although most land registration has taken place in Java.<sup>36</sup> Most registration there had place under a large foreign-funded land-registration project, which started in 1995 and was intended to register all land in Indonesia within 25 years (see Slaats, 2000), beginning in West Java (see Anderson, 1996).

The BAL requires primary land rights to be recorded in a legal registry<sup>37</sup>, and exempts people who cannot afford registration expenses from payment.<sup>38</sup> Upon registration people receive a land certificate, which may serve as evidence of their right. Nonetheless land registration does not appeal to Indonesia's masses. NLA officers have been known to demand high prices and have a general reputation for corruption. An NLA certificate by itself is rarely sufficient or decisive in a land dispute, even if the case is brought before the court. For instance, Government Regulation 24/1997 on Land Registration which implements BAL provisions on this issue allows various documents as supportive evidence for initial registration of land.<sup>39</sup> This allows for claims to be awarded retroactively and has made the production of fake historical land documents a popular crime.<sup>40</sup>

The NLA is a decentralised service with offices at each level of government. Registered title holders are supposed to report any changes to their rights, such as through sale, gift or inheritance, to the regional NLA offices that are responsible for the maintenance of land registries. Failure to do so would not render the right void, but it would cause difficulties to the new right holder in proving his right (Harsono, 2005:515-516). The system attracts two major kinds of criticism. NLA officials lament the lack of popular will to keep the system updated and valid. However, right holders basing themselves on earlier cases of multiple-certification of the same plot or non-registration of reported changes expressed to me their distrust in NLA officials. Thus, many among the Indonesian masses prefer to put their trust in claim recognition in their local connections - support of neighbours or other fellow-villagers, family members, or other persons, rather than present themselves at the expensive and uncertain NLA registry.

36 Slaats (2000) mentions 7 percent before 1995. The Head of BPN stated in February 2004 that around 32 percent of all plots were registered (Tempo, 5 February 2004). In October of the same year the Coordinating Minister of Economic Affairs stated a percentage of 20 for registered land. (Kompas, 5 October 2004).

37 BAL Articles 23, 32 and 38 in conjunction with 19. BAL in conjunction with Article 9 Government Regulation No. 24/1997 on Land Registration.

38 BAL Article 19. However, Article 61(2) of Government Regulation No. 24/1997 on Land Registration states that people unable to afford registration *can be* exempted from *part of* or all the costs for registration. This regulation is an elaboration of BAL Article 19 and replaces Government Regulation No. 10/1961 on Land Registration.

39 Examples of such documents include a counterpart original of a notary deed concerning a European ownership right; a private contract concerning the transfer of land that is witnessed by an *adat* leader / head of the village / head of the neighbourhood, created before the enactment of the 1997 Government Regulation; an official deed concerning the transfer of land which has not yet been registered; a colonial land tax document, or a letter by the land and building tax department clarifying the history of the land. In case the evidence is incomplete, witnesses or the person claiming the right can give testimony (see Harsono, 2005:495-498).

40 Personal communication by judges at two East Kalimantan district courts and the national Supreme Court.

Post-reformation views of the BAL vary. Whereas proponents of the BAL maintain that full implementation of the BAL, as opposed to the piecemeal rule-making followed since its drafting, would lead to a just and sensible land rights system, others argue that the present slack implementation may have been a blessing in disguise as far as *adat* is concerned. Bedner and Van Huis (2008), discussing the merits of Indonesian law with regard to *adat* rights, reach the sobering conclusion that "... the BAL is quite ingenious in taking away what it purportedly grants. It opens up a host of opportunities to deprive *adat* communities of their rights, whether these are collective or individual in nature, and whether private or public law-oriented. That there are still *adat* rights left is a consequence of weak implementation rather than of the wording of the statute."

Two pieces of legislation in 1999 signalled that land law reform might be a realistic possibility, although they contained no indications of time and shape. Presidential Decree 48 of 1999 instructed the establishment of a team of ministers that was to review policy and law regarding the implementation of land reform<sup>41</sup>, while Ministerial Regulation 5/1999 by the Minister of Agraria/Head of BPN, which is discussed at length in chapter 10, suggested that the recognition of *ulayat* rights was being considered by the government. Although neither measure has had far-reaching effects they did draw attention to land issues, which is made clear by two specific new laws.<sup>42</sup>

### The People's Consultative Assembly on Agrarian Reform

In 2001, the People's Consultative Assembly Policy Decree IX of 2001 on Agrarian Reform and Management of Natural Resources (see Lucas and Warren, 2001:106-116).<sup>43</sup> The decree is a liberal piece of legislation.<sup>44</sup> Its preamble states that natural resources management has led to a decrease in environmental quality, unequal ownership structures and caused conflicts (point c). Next is a declaration that existing legislation related to land and natural resources is contradictory and overlapping (point d), that a well-coordinated system for agrarian and natural resources exploitation that takes into account the needs and aspirations of the population and solves conflicts is needed (point e), for which serious political commitments are required (point f). The decree requires agrarian reform to respect human rights (Article 4b), as well as to recognise, respect and protect the rights of *adat* communities to land and natural resources (Article 4j). Moreover, the decree instructs a return to the aborted land reform, stipulating the restructuring of land tenure to provide a just system that pays attention to land ownership rights for the people

41 Keputusan Presiden Republik Indonesia Nomor 48 Tahun 1999 Tentang Tim Pengkajian Kebijaksanaan dan Peraturan Perundang-Undangan Dalam Rangka Pelaksanaan Landreform.

42 Generally speaking, this legislation has had little effect so far. Lucas and Warren (2003:105) point out that the study team established in the Presidential Decree never met or produced a report, and suggest that the decree basically was lip service to placate grassroots concerns. The impact of the ministerial regulation on *ulayat* rights has been very limited as well, as will be discussed in chapter nine.

43 Ketetapan Majelis Permusyawaratan Rakyat Republik Indonesia Nomor IX/MPR/2001 Tentang Pembaruan Agraria dan Pengelolaan Sumber Daya Alam.

44 People's Consultative Assembly Decree I/MPR/2003 classifies decree IX/MPR/2001 as one of the Assembly's decrees that remain in force until replacing legislation has been drafted (Article 4.11).

(Article 51b). Exactly what ‘land for the people’ is, is not made clear in the decree, but its inclusion might be considered a promising development for the land reform movement.

The decree sets the standards for regulatory, financial and government reforms as well as for new legislation in the field of agraria, revision of which is instructed by the People’s Consultative Assembly in decree V/MPR/2003 as well.<sup>45</sup> Regarding land reform, decree XI/2001 instructs the government to settle conflicts, renew the agrarian legislation and provide a functional law for agrarian and natural resource issues, as well as to simplify the process of land certification for the ‘small people’ (*rakyat kecil*) and the farmers (Article 2j of the decree’s appendix).

Opinions of Policy Decree IX of 2001 and its meaning are divided. Within the government the main issue is whether the decree instructs an inclusive reform in which natural resources management should become part of agrarian law, and hence invade the domain of the powerful departments of forestry and mining. In describing the role of these considerations in the drafting of the decree, Lucas and Warren (2003:110) point out how the decree consists of two parts in which

*“The separate section on natural resources, promoting “optimal exploitation” (§5/2b) in the final Policy Decision, is expressed in much more developmentalist language than the agrarian reform section and continues to beg questions about the relationship between reform in the two spheres.”*

Clearly this poses a threat to the potential success of agrarian reform. If, as appears to be the assumption in the forestry and mining departments, agrarian reform is to be limited to the BAL, to BAL-derived legislation and to the NLA, the impact of reform will be severely limited. Moreover, the natural resources section strongly favours the government and possible government-instigated development. Whether these differing visions can be reconciled in revised agrarian law is a fundamental question begging an answer.

### A Presidential Decree on National Politics in the Field of Agraria

The task of providing this answer and revising the BAL in line with National Assembly Policy Decree IX of 2001, was given to the NLA in Presidential Decision 34 of 2003 on national politics in the field of agraria.<sup>46</sup> The task of revising the BAL fell to the NLA’s deputy director, a law professor and a proponent of the reading of the BAL as umbrella law for land and natural resources alike (e.g. Sumardjono, 2004; Afiff et. al., 2005:8). The NLA produced a number of drafts none of which were submitted to Parliament or the President, probably because the ideals of Policy Decree IX/2001 could not be matched with the desires of the powerful forestry and mining

sectors. A 2005 draft –the most recent draft available at the time of writing– illustrates this dilemma.<sup>47</sup> The revised Article 3 of the BAL on the status of *adat* land rights is extended with a substantial section on *hak ulayat* largely based on the ideas and formulations put forward in ministerial regulation 5/1999 (see chapter 10). Despite this, the new formulation of Article 5 of the BAL limiting the validity of *adat* and *ulayat* rights is expanded with the sentence that *adat* is valid law “in so far as not arranged elsewhere in this law”.<sup>48</sup> The vagueness of the limiting conditions is not altered in any way. Fitzpatrick (2006:105-109) provides an extensive discussion of the same draft. His main findings can be summarised as:

1. The 2005 draft BAL clarifies the State’s right of control as one of management rather than private ownership (p. 105).
2. The 2005 draft BAL compounds the uncertainty surrounding *adat* and other unregistered rights (p. 107).
3. The 2005 draft BAL compounds the potential for abuse as it allows regional governments the power to release land without the landholder’s consent (p. 108).

At the time of writing, there is no indication that a final draft is forthcoming. Critical voices are questioning whether a revised BAL is forthcoming at all, since the ideals of the reformation are simply not compatible with the vested interests of the large ministries.

### A Presidential Decree on Land Acquisition for the General Good

An indication of the persistence of forces countervailing a revision of the BAL and a potential increase of its authority can be found in Presidential Decree 36 of 2005 on Land Acquisition for the Realisation of General Interest Development.<sup>49</sup> This presidential decree allows government to revoke land (property) rights if that land is going to be used for general interest development projects (Article 2.1). The government is instructed to pay for such land or offer other land in exchange (Article 2.2.), and the decree contains a long list of the type of projects that can be classified as general interest development (Article 5). Opponents fear that the decree will work against the interests of the population (Tempo, 23 July 2005) and will be misused by government officials to evict people from forests or valuable urban land in order to profit from investment projects (WALHI, 29 June 2005; Urban Poor Consortium, 5 August 2005). Rather than contributing to the investment of authority over land in the NLA, this Presidential Decree weakens the NLA’s position by diverting authority back to ‘the government’: not a clear definition and one that includes numerous agencies and ministries in addition to the NLA. The government announced that it would revise the Presidential Decree and that it would be open

45 Keputusan Majelis Permusyawaratan Rakyat Republik Indonesia Nomor V/MPR 2003 Tentang Penugasan Kepada Pimpinan Majelis Permusyawaratan Rakyat Republik Indonesia Untuk Menyampaikan Saran Atas Laporan Pelaksanaan Putusan Majelis Permusyawaratan Rakyat Republik Indonesia Oleh Presiden, DPR, BPK, MA Pada Sidang Tahunan Majelis Permusyawaratan Rakyat Republik Indonesia Tahun 2003.

46 Keputusan Presiden Republik Indonesia Nomor 34 Tahun 2003 Tentang Kebijakan Nasional di Bidang Agraria.

47 Rumusan Hasil Rapat Konsultasi Teknis Kepala Bidang Hak-Hak Atas Tanah Dadan Petanahan Nasional Seluruh Indonesia. Surabaya, 14-17 Desember 2005.

48 “Apabila belum diatur dalam undang-undang ini”.

49 Peraturan Presiden Republik Indonesia no 36 Tahun 2005 Tentang Pengadaan Tanah Bagi Pelaksanaan Pembangunan Untuk Kepentingan Umum.



to criticism in the process (Tempo, 13 June 2005; Suara Republik, 24 June 2005). However, the replacement Presidential Decree 65 of 2006 still contained most of the opposed elements and was brought about without consultation with the objecting organisations (cf. Human Rights Watch, 2006:30-34; Kompas 28 June 2006). The decree was found to suffer from vague definitions and it was argued, its subject was more suited to be dealt with in legislation of the *undang-undang* category (such as the BAL) rather than in a ‘mere’ presidential decree (Sumardjono, 2006).<sup>50</sup> There seems, however, to be no inclination within the government to review the decree yet again.

Land law, in Indonesia, is an area of strong disagreement between those calling for revision and those opposing it. However, revision of the BAL alone will mean little if the forestry law and similar laws remain autonomous.

### 3.6 The Forestry Law and related legislation

With over seventy percent of Indonesia’s land mass defined as forestry land, those appointed as its managers are in an influential position. Since the early eighties this position is held by the Department of Forestry<sup>51</sup>, based on Law 5 of 1967 on the Basic Forestry Regulations<sup>52</sup>, the original Basic Forestry Law.

Law 5/1967 gives the state the authority to designate and manage Indonesia’s forest lands (Article 1 paragraph 1) –notwithstanding the earlier recording of the state’s authority over all land in Indonesia in the BAL– and charges the population with assisting the government in developing the nation. Law 5/1967 hence has little time for land claims by the population that oppose the interest of the state. Article 5 paragraph 1 states that all forest in Indonesia and the natural resources found therein are controlled by the state, which gave the state the right (Article 5 paragraph 2) to plan the usage of forests, decide all legal issues pertaining to forests and draw up legislation relating to the forests.

Law 5/1967 makes no reference to the BAL or the various categories of land rights listed therein. Article 2 distinguishes between state forest (*hutan negara*), where no BAL private ownership rights apply, and private forest (*hutan milik*) which is forest growing on privately owned land, generally known as ‘people’s forest’ that can be owned individually, commonly, or by a legal body (elucidation to Article 2).<sup>53</sup> The key to forest ownership thus lies in landownership.

The position of *adat* rights is a precarious one. The elucidation of Article 2 explains that *adat* rights to forest are limited to *ulayat* rights, the validity of which is

to be reviewed critically and may not interfere with national interests or higher legislation. It is not stated how the validity of *ulayat* claims is to be reviewed, or by whom. Article 17 decrees that communal as well as individual usufructs to forests may remain in place, provided they are deemed still valid and do not interfere with other purposes for which the forest is used. This gives no recognition of *ulayat* claims: the elucidation of Article 17 states that since such claims cannot be verified, they cannot be honoured if they oppose government plans such as forest clearing or transmigration projects.<sup>54</sup> The state designates forest land, which is not subject to the BAL. Regulations set out in the BAL hence do not pertain to forest land, making it virtually impossible to have *adat* claims in forest land recognised. This meant that communities living in forest areas and working forest land would need to request usage rights from the forest authorities. Claims of property based on *adat* have no value in this situation.

Article 3 of Law 5/1967 contains a rudimentary overview of various types of forest usage that the minister can instruct, such as conservation, timber production, conversion to agricultural usage, tourism and hunting areas. All types pose restrictions to usage and require identified right holders recognized under the Forestry Law.

The size of Indonesia’s forest land was established between 1981 and 1985, when a massive mapping exercise was carried out to create maps and plans for the forest land in each province (Evers, 1995; Moniaga, 1993). This exercise saw almost 75 percent of Indonesia’s land mass classified as forest land. This blueprint for forest usage in Indonesia was drawn up without consultation of local forest users (Peluso, 1995:389) and thus effectively concerned an official view at odds with the actual forest usage situation.<sup>55</sup> The Department of Forestry’s approach to mapping and planning of forest usage posed a serious problem to users of state forest land. Clearings of gardens and crops as part of forest concessions threatened the subsistence of local communities, and were frequently experienced by these as extremely unjust and wanton government actions. Some such communities pragmatically joined logging and plantation companies to secure the cash income needed to replace or supplement lost harvests (Clarke, 2001). For some this led to an intimate knowledge of the logging industry and provided the base for cooperation in the years following decentralization (Engel and Palmer, 2007; Resosudramo, 2007).

### Revision of the Forestry Law

The Department of Forestry’s resistance against the BAL and the Department’s authoritative application of the Forestry Law by rejecting of nearly all land claims

<sup>50</sup> Peraturan Presiden Republik Indonesia no 65 Tahun 2006 Tentang Perubahan Atas Peraturan Presiden Republik Indonesia no 36 Tahun 2005 Tentang Pengadaan Tanah Bagi Pelaksanaan Pembangunan Untuk Kepentingan Umum.

<sup>51</sup> The department of Forestry took shape between 1980 and 1984. Initially forestry was a subdivision of the Department of Agriculture.

<sup>52</sup> Undang-undang no 5 tahun 1967 Tentang Ketentuan-Ketentuan Pokok Kehutanan.

<sup>53</sup> Hutan Milik ialah hutan yang tumbuh atau ditanam di atas tanah milik, yang lazimnya disebut hutan rakyat dan dapat dimiliki oleh orang, baik sendiri maupun bersama-sama orang lain atau Badan Hukum.

<sup>54</sup> Karena itu tidak dapat dibenarkan, andaikata hak ulayat suatu masyarakat hukum adat setempat digunakan untuk menghalang-halangi pelaksanaan rencana umum pemerintah misalnya: menolak dibukanya hutan secara besar-besaran untuk proyek-proyek besar, atau untuk kepentingan transmigrasi dan lain sebagainya. Demikian pula tidak dapat dibenarkan.

<sup>55</sup> From 1999 onwards did provincial level governments gain a voice in forest use planning, but forest dwellers and communities living in forest areas did not receive influence (see Contreras-Hermosilla and Fay, 2005:10-11).

in forest areas were causes of considerable resentment and uncertainty for those living in areas designated as forest land (see for instance McCarthy, 2000:104-113; Peluso, 1992). The creation of inclusive national land law that would incorporate the authorities of both the BAL and the forest law was a major tactical goal of the activists and organisations lobbying the People's Consultative Assembly in 1999 (Lucas and Warren, 2003:109-110). Following on the heels of the 1999 decentralisation laws, forestry law 5/1967 was revised and reappeared as Law 41 of 1999 on Forestry.<sup>56</sup> The forestry hegemony was, by then, seriously under threat by authorities decentralised to regional government but also by more direct and practical legislation. An example is Government Regulation 6/1999 on Commercial Forestry and the Extraction of Forest Products in Production Forest that was used, in combination with ensuing lesser legislation, by regional governments to issue logging and forest usage permits using their own authority and ignoring the Department of Forestry (Barr et. al. 2006:88-93).<sup>57</sup> This posed a serious threat to one of the Department's main source of income and political influence through the issuing of large scale logging licenses.

Law 41/1999 included various notable changes. First, the concept of *adat* forest (*hutan adat*) was introduced into forestry legislation. *Adat* forest is defined as state forest in the territory of an *adat* community (Article 1.6), and as such is not the exclusive domain of that *adat* community. The state remains in control of all forests and the natural resources within them, and is responsible for defining their status (Article 4). State forest, as Article 5.2. explains, can take the shape of *adat* forest, but to do so the community claiming *adat* forest must qualify as an *adat* community first. The elucidation to Article 67 contains conditions for this. It stipulates that an *adat* community can still be considered to exist if:

- a) the community still functions as a 'law community' (*rechtsgemeenschap*)
- b) *adat* institutions can be said to exist and function
- c) a clear *adat* territory can be discerned
- d) *adat* law institutions that are still respected exist and
- e) a harvest of forest produce is still collected from the area to meet daily needs

Article 67 itself states in paragraph 1 that *adat* communities, provided they can be proven to exist and are acknowledged as existing have the rights:

- a) to collect forest products for the daily needs of the *adat* community
- b) to manage the forest based on prevailing *adat* law provided this does not contradict official law; and
- c) to receive empowerment aimed at raising their level of prosperity

<sup>56</sup> Undang-Undang Republik Indonesia Nomor 41 Tahun 1999 Tentang Kehutanan.

<sup>57</sup> Peraturan Pemerintah No. 6/1999 tentang Pengusahaan Hutan dan Pemungutan Hutan pada Hutan Produksi.

Paragraph 2 continues with the statement that the existence or ending of *adat* communities such as referred to in paragraph 1 must be recorded in a regional regulation, whereas paragraph 3 states that more elaborate provisions should be formalised in a government regulation.

The new Forestry Law got a mixed reception. Wollenberg and Kartodihardjo (2002), writing two weeks after the signing of the new law, felt that it signified a significant shift in increased state support for the devolution of forest management and forest benefits from the state to local communities but warned that the implementing regulations and the ensuing usage of the law would be conclusive in this. Their careful optimism appears justified, as at first sight there appears to be a considerable improvement in the situation of *adat* communities, yet Bedner and Van Huis (2008) point out that *adat* claims are only taken into account for collecting forest products. No other rights or certainties are provided and as such law 41/1999 offers little improvement. Moreover, Bedner and Van Huis (2008:184) actually identify a 'Catch 22' dilemma in that:

*Adat law communities can only fulfil their needs by collecting forest products, because farming in forest areas is prohibited by law. As a result the communities concerned need 'empowerment', but then they will cease to be recognised as adat law communities and lose their ulayat rights. This is clearly stated in the Elucidation on Article 67, which identifies dependence upon collecting forest products as one of the key criteria for recognition as an adat law community.*

A literal interpretation of law 41/1999 would leave one no choice but to conclude the virtual inexistence of *adat* communities in Indonesia. Communities depending purely on the gathering of forest products, as the law requires by ruling out farming, hardly exist. Virtually all communities harbouring *adat* claims engage in agriculture to a greater or lesser degree. However, the law does not prescribe whether the community must be fully dependent on the gathered forest products or whether additional resources such as labour or farming in non-forest areas would be acceptable on the site as well. Many recent village or region-level studies on the recognition of local *adat* indicate that such recognition, which is rare to begin with, hardly ever takes place in full accordance with official law.<sup>58</sup> It thus remains questionable whether law 41/1999 adds anything to forest law that improves the standing of *adat* claims other than that it indicates that recognition of *adat* communities is possible, it could even worsen the position of *adat* claims to forest land.

### Community forestry: certainty for forest land users?

Although there was little reason to expect a change of direction in the policies regarding forest land, the revised Forestry Law includes the concept of 'community

<sup>58</sup> See Bakker and Moniaga (2007) for an overview and critical discussion of regional recognition of *adat* claims.

forestry’ (*hutan kemasyarakatan*). Under community forestry, usage rights to forest itself and to forest land can be given to a local population group organised in a cooperative. The Department of Forestry poses specific usage conditions for each case, thus providing a degree of certainty to the forest users.<sup>59</sup>

The elucidation to Article 5 of the revised Forestry Law states that state forest must be primarily applied for population empowerment through community forestry and that cooperatives can conduct activities ranging from collecting forest products to growing cash crops in consultation with, and assisted by, the regional forestry office. The right to use the land lasts for 35 years, which may be considered long enough to justify investments. Nonetheless the decision attracted criticism due to its requirement of groups to organise in cooperatives, a format that contravenes traditional forms of communal usage. Furthermore the need to cooperate with the forestry office is seen as conditionally similar to an official forest concession -such as exists for logging or plantation companies- rather than as a new, socially oriented form of forest usage.<sup>60</sup>

Community forestry became an attractive possibility through Ministerial Decree 31/Kpts-II/2001 of the Minister of Forestry, which was issued just after the 1999 decentralisation laws came into force.<sup>61</sup> The main change was that regional governments now received the authority to designate community forest areas, rather than the Department of Forestry (Article 7.1). Although the decree limited potential locations for community forestry to areas for which no permits had been given out by the Department of Forestry (Article 5.2), while the duration of the usage rights was reduced from 35 to 25 years (Article 20), albeit subject to renewal. Moreover, the permit is issued in two phases. First is a temporal permit issued for a period of three to five years after which a definitive permit can follow (Article 21). Safitri (2006:5) suggests that the trial period is there in order to allow the authorities to assess whether the cooperative functions according to the law and manages the forests well. With this legal framework for social forestry in place and with wide attention being given to it by NGOs throughout the nation, implementation of the policy at the regional level seemed to be the next step. Here, however, things went astray. A new Minister of Forestry, less charmed by decentralizing forestry authority in general, and to regional governments rather than forestry authorities in particular, put the implementation of community forestry on hold, and decided upon a new course.

59 The concept of community forestry came to prominence in a 1998 decision of the Minister of Forestry: *Keputusan Menteri Kehutanan dan Perkebunan Nomor 677/Kpts-II/1998 Tentang Hutan Kemasyarakatan*. This ministerial decision succeeded earlier legislation on community forestry. Ministerial Decree 622/Kpts-II/1995 on Community Forestry Guidance (*Pedoman Hutan Kemasyarakatan*) was the first legislation using the concept, and was the basis of a number of experimental projects that mostly failed. According to critics because communities’ access to the forest was too limited. (see Safitri, 2007).

60 In the spirit of reform, the Department of Forestry decided to adapt decision 677/Kpts-II/1998 to the new law 41/1999 and the decentralisation laws by issuing Ministerial Decree 865/Kpts-II/1999 (*SK Menhutbun No. 865/Kpts-II/1999 Tentang Penyempurnaan Kepmenhutbun No.677/Kpts-II/1998 Tentang Hutan Kemasyarakatan*) on the implementation of decision 677/Kpts-II/1998 - a decree that did however differ little from the legislation it replaced.

61 *Keputusan Menteri Kehutanan Nomor: 31/Kpts-II/2001 Tentang Penyelenggaraan Hutan Kemasyarakatan*.

This came in 2004, when Ministerial Regulation 1/Menhut-II/2004 on the Empowerment of Forest Communities was promulgated.<sup>62</sup> This law is intended to empower forest communities through enhancing community awareness and capacity in relation to the forest (Article 2) and to use social forestry as a means to do so optimizing community potential while offering protection from ‘unhealthy competition’ (Article 5).

The definitions and goals put forward in 1/Menhut-II/2004 are thrumming with good intentions, but are vague and inoperational. The regulation appears to recognize this in Article 12 paragraph 1, which states that further implementing legislation will follow. In the meantime, the community forestry is practically stopped by Article 12 paragraph 2, which states that any social forestry permits must be issued by the Department of Forestry as individual ministerial regulations.

Safitri (2006:6) is uncompromising in her view of the development of community/social forestry, when she remarks that forestry law reforms have nothing to do with changing the forest land regime. Community rights on forest land are still obscure and the changes to the community/social forestry legislation have created legal uncertainty and obscurity rather than contributed to a clear policy. Safitri feels that forest law reforms have led to involution rather than progressive and substantial developments. Yet, as she demonstrates in her paper, decentralisation has at least created the possibility for determined local-level officials to go against the Forestry empire in Jakarta. In the province of Lampung, regional heads and the provincial governor support community forestry schemes and cooperate with the regional forestry office in maintaining community forestry schemes that are much praised by the local population, but go against the directives of the Department of Forestry. The tussle over control of forest land between the Department of Forestry and non-forest government authorities provides the Lampung administration with legal ammunition for its policies, but also leads to the disturbing conclusion that the decentralisation of authority over forest land for the sake of community forest schemes has failed. First because of poor implementations, second because of recentralisation by the Department. It is through independent actions by officials such as those in Lampung and not through central policies that the Indonesian population gains access to state forest land, even though the Forest Law’s elucidation states that this empowerment of the population is the first purpose of state forest land.

## Forest administration and forest management legislation

In 2002 the national government implemented Government Regulation 34/2002 on Forest Administration and the Formulation of Plans for Forest Management.<sup>63</sup> Serving as an implementation regulation to the revised Forestry Law, Government Regulation 34/2002 gave directions on the Forestry Law’s Articles 5 (forest man-

62 *Peraturan Menteri Kehutanan Nomor P.01/Menhut-II/2004 Tentang Pemberdayaan Masyarakat Setempat Di Dalam Atau Sekitar Hutan Dalam Rangka Social Forestry*.

63 *Peraturan Pemerintah Republik Indonesia Nomor 34 Tahun 2002 Tentang Tata Hutan dan Penyusunan Rencana Pengelolaan Hutan, Pemanfaatan Hutan dan Penggunaan Kawasan Hutan*.

agement), 7 (supervision) and 15 (compensation and administrative sanctions).<sup>64</sup> The regulation was widely considered to be a central government attempt to recentralize authority in the forest sector and counter the effects of decentralisation laws 22 and 25 of 1999. Regional governments are hardly mentioned in the law. Regulation 34/2002 assigns responsibility for the development of long-term forest-management plans to the provincial forestry offices, but this is subject to authorisation by the Department. Most importantly for regions' finances, the regulation assigned far-reaching control over the timber trade to the national government and gave the Minister of Forestry the sole authority to issue 'Commercial Timber Utilization Permits' (*Izin Usaha Pemanfaatan Hasil Hutan Kayu*) for forests.

Regional governments have the authority to issue five different kinds of 'lesser' permits for forest areas. None of these refer to social or community forestry, but the Non-Timber Forest Product Extraction Permit (*Izin Pemungutan Hasil Hutan Bukan Kayu*), for instance, could provide regional governments with leverage in that direction, although the control of the Department of Forestry over large-scale timber extraction leaves regional governments little room to manoeuvre. The regulation's main sting is in its tail. Article 99 explicitly states that all timber extraction permits and timber concessions issued before decentralisation remain valid until their original expiry date, while Article 100 revokes Regulation 6/1999 on Commercial Forestry and the Extraction of Forest Products in Production Forest – a regulation which allowed regional governments to give out forest concessions of their own independent of the Department of Forestry. In short, Department of Forestry concessions that were ended by regional governments were reinstalled and authority decentralised to the regional governments was reverted back to the Department of Forestry.

In 2007 the theme of people's participation on forestry was again developed in Government Regulation 6 of 2007 on Forest Administration and Management Planning.<sup>65</sup> In this regulation community forestry is once again brought to the fore. The Department of Forestry remains the authority responsible for issuing community forestry licenses, but this authority can be delegated to provincial governors (Article 96.2). The regulation further allows for provincial governors and regional heads to issue licenses (*izin usaha pemanfaatan hutan kemasyarakatan*) with forest usage privileges highly similar to those of community forestry within the boundaries of their respective territories (Article 96b).<sup>66</sup> Furthermore, regulation 6/2007 introduced the concept of people's plantations (*Hutan Tanaman Rakyat*, HTR) – plots of logged over forest replanted with fast growing tree species intended as base materials for the wood and wood pulp industry (Article 1 paragraph 19). HTR plots can be managed by individuals or corporations (Article 67 paragraph 5), and are usually of a size of fifteen hectares (Van Noordwijk et. al., 2007:15). Licenses are issued by the Department of Forestry or, by delegation, by the pro-

vincial governor (Article 62 paragraph 4) and can be issued for a maximum of 100 years (Article 54 paragraph 1).

Meanwhile, the power struggle over the authority over forest resources continues unabated. Recent examples are government regulations 2 and 3 of 2008, which approach the issue from different sides. Government Regulation 2/2008 concerns non-tax state revenues generated by development in forest areas outside of projects under the authority of the Department of Forestry.<sup>67</sup> The elucidation of Regulation 2/2008 explains that forests are of importance to the daily life of the population and that development in forest areas must hence be undertaken with their needs in mind. If forest is removed for commercial projects compensation should be paid to the Indonesian population at large and go into the state treasury. The regulation gives a formula to calculate the compensation and gives fixed tariffs to work with. Compensation is not only applicable to such obviously non-forestry affairs as mining in forest areas (which falls under the Department of Gas and Mining), but also to such matters as laying buried cables, or the building of a toll road through a forest area. Whereas before it was common practice to arrange such affairs with Department of Forestry officials, the new regulations makes it very clear that if the specific authority is not laid down in the Forestry Law, it is not a forestry affair.

Government Regulation 3/2008 contains adaptations to Government Regulation 6/2007 on Forest Administration and Management Planning. Regulation 3/2008 further specifies the implementation and regulation of HTR plots and defines in more detail the diverse authorities of the various levels of government in this process (replacement Articles 40, 44).<sup>68</sup> Of special note in relation to the above is that the issuing of HTR licenses can now be delegated to regional heads or even to an official appointed by the regional head (replacement Article 62 paragraph 4). The authority to issue community forestry permits, however, goes the other way. Whereas Regulation 6/2007 stipulated that these could be issued by the Department of Forestry and through delegation by regional governors, this authority now once again returns to the Department of Forestry (replacement Article 96 paragraph 2). A recentralisation *pur sang*.

## The Department in society

The promulgation of these successive regulations indicates the continuing power struggle over forest resources, which includes not just the Department of Forestry and the central government, but government officials at lower levels – the provinces and the regions – as well. Although the regulations alternate between

<sup>64</sup> See Barr et al. (2006:46–51) for an extensive discussion of Government Regulation 34/2002.

<sup>65</sup> Peraturan Pemerintah Republik Indonesia Nomor 6 Tahun 2007 Tentang Tata Hutan dan Penyusunan Rencana Pengelolaan Hutan, Serta Pemanfaatan Hutan.

<sup>66</sup> The main uncertainty appears to be the term of the licence, which is not stated anywhere.

<sup>67</sup> Peraturan Pemerintah Republik Indonesia Nomor 2 Tahun 2008 Tentang Jenis Dan Tarif Atas Jenis Penerimaan Negara Bukan Pajak Yang Berasal Dari Penggunaan Kawasan Hutan Untuk Kepentingan Pembangunan Di Luar Kegiatan Kehutanan Yang Berlaku Pada Departemen Kehutanan. The regulation has its base in Law 20/1997 on Non-Tax Government Revenues (*Undang-Undang Negara Indonesia Nomor 20 Tahun 1997 Tentang Penerimaan Negara Bukan Pajak*), which states natural resources utilisation as a source of such income in Article 2.1b. The elucidation to the Article explains that royalties from mining and forestry enterprises apply.

<sup>68</sup> Peraturan Pemerintah Republik Indonesia Nomor 3 Tahun 2008 Tentang Perubahan atas Peraturan Pemerintah Republik Indonesia Nomor 6 Tahun 2007 Tentang Tata Hutan dan Penyusunan Rencana Pengelolaan Hutan, Serta Pemanfaatan Hutan.



introducing decentralising and recentralising measures it is obvious that their contributions to a clearer division of authority over land are limited. It seems that the Department of Forestry has outstripped the NLA, but that the officials at the various levels of government and –possibly– other ministries such as the Department of Mining and Energy are showing themselves to be competitors after curbing the Department of Forestry’s powers in favour of their own.

There is, however, a fourth party involved that has little legal power but that can address the conscience of government officials; the Indonesian people. Now that *reformasi* has had the government elite of president, ministers and parliament pay homage to democracy, forestry officials place themselves in an awkward position that invites comparisons to New Order elitism when going straight against the wishes and interests of local population groups. That does not mean that the Department of Forestry –or the government in general– has radically altered its stance, but an increased sensitivity to popular demands is developing at least at the regional level.<sup>69</sup>

### 3.7 Indigenous peoples’ rights in Indonesia

In the preceding paragraphs it has become clear that at least in theory some sort of official recognition of *adat* community’s rights appears to exist. However, the step from theory to practice seems to be a move government authorities are reluctant to make. Most legislation discussed in the preceding parts of this chapter can be largely categorised as unclear or indecisive when it comes to the exact recognition given to *adat*, and even those laws that at first glance would appear to provide a fundament for *adat* claims have not conclusively proven to recognize *adat* rights. Examples of these include Law 39/1999 on Human Rights and the Indonesian Constitution.

Law 39/1999 on Human Rights includes a reference to *adat* law communities.<sup>70</sup> Article 6 states that:

1. Within the framework of human rights, differences and needs of indigenous communities shall be observed and protected by law, society, and the government.
2. The cultural identity of *adat* law communities including the right to *ulayat* land shall be protected in accordance with the developments of time.

The law contains what might be read as recognition of *adat* land rights, but again the issue is not quite that simple. The article’s elucidation makes clear that recognition and protection of *adat* rules found to be valid and respected by the community,

is a basic human right provided the community has shown itself to respect national law. How this is to be established is not made clear. Moreover, Article 2 decrees that protection is to be judged by the vague criterion of being ‘in accordance with the developments of time’. It is not made clear who is to decide or what the criteria are.

The Constitution, on the other hand, is a lot clearer on what is possible. The second amendment to the Constitution in 2000 introduced a chapter on human rights into the text. Article 28i.3 of this chapter states that the cultural identity and rights of traditional peoples will be respected in accordance with the changing times and culture. This is a sentence that, by itself, is little less than another vague promise, but Article 18b, which is in the chapter on regional government, decrees that:

1. The state recognizes and respects individual regional governments which are specific (*khusus*) or special (*istimewa*) as ordained in law (*undang-undang*).
2. The state recognizes and respects individual *adat* law communities and their traditional rights insofar as they are still alive and in accordance with the evolution of the population and the principles of the Unitary Indonesian State, as ordained in law (*undang-undang*).

Even though conditions for recognition are still lacking, the Article identifies the forum that decides on the matter: recognition of an *adat* community requires a law of *undang-undang* level is required and those are made by parliament. As far as I am aware no *undang-undang* law recognizing an *adat* law community has ever been promulgated.

Nonetheless the network and legal forums for the *adat* movement continue to expand. The Indonesian National Commission on Human Rights (*Komisi Nasional Hak Asasi Manusia*), which is moderately progressive in its take on reform, has published various books detailing the plight of individual *adat* communities as well as the dilemma of the government to maintain the unity of the state vis-à-vis the recognition of *adat* claims (see Bahar et al., 2005 and Bahar and Mitchell, 2006). The commission has received a steady stream of cases submitted by *adat* communities calling upon the commission to pass judgement on the recognition of *adat* rights, although its judgements are advisory rather than binding. In several conflicts over *adat* lands have violations of human rights been diagnosed by the commission. It is, however, uncertain whether the responsible authorities acted upon the commission’s reports.

The matter of indigenous peoples’ rights has been taken up in the highest regions of government. On 9 August 2006, the International Day of the World’s Indigenous Peoples, President Susilo Bambang Yudhoyono gave a public speech in which he stated that the national unity and interest had to prevail over those of individual groups, but that clarity regarding the position of *adat* communities should be created through the future promulgation of a law on customary rights. Moreover, President Yudhoyono referred to a new general secretariat for the *adat* law communities of Indonesia (*Sekretariat Jenderal Masyarakat Hukum Adat Indonesia*). What this body’s functions will be is unclear and at the time of writing it had not yet been founded.

<sup>69</sup> This sensitivity is stimulated by the system of direct election for the district head and parliament, but it means that these authorities can put their weight in the scale with the regional forestry office or even the Department of Forestry in case this agency –or other similar government bodies lacking a direct relation with the population– engage in unpopular measures.

<sup>70</sup> *Undang-Undang Republik Indonesia Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia*.

## International treaties

In the context of international law the governmental stance regarding the equalization of *masyarakat adat* to indigenous peoples becomes clearer. Indonesia has ratified all ILO conventions on labour law, but not convention 169 on indigenous and tribal peoples which has not been ratified by any Southeast Asian state.<sup>71</sup> Bedner and Van Huis (2008:168) point out that Indonesia has ratified the UN Convention on Biological Diversity, which refers to indigenous peoples at various locations, but that in the official Indonesian version ‘indigenous’ has been translated as ‘local’ (*lokal*) or ‘genuine’ (*asli*) and not as *adat*. The term ‘genuine’ (*asli*) is often used to connote Indonesians who are not of foreign (e.g. Chinese, Arab, etc.) descent, which would hence imply that, according to the Indonesian interpretation of the Convention, it applies to all Indonesians of non-migrant descent. This would mean that the Indonesian government is attempting to neutralise the provisions of the Convention, and may well be successful in doing so as long as international law does not provide Indonesian nations with a possibility of forcing the government to review its explanation.<sup>72</sup>

Evidence for this notion is provided by the declaration the Indonesian delegate made regarding Article 1 of the United Nations’ International Covenant on Civil and Political Rights, which Indonesia accessed on 23 February 2006. Article 1 consists of three parts:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Indonesia’s declaration read:

*“With reference to Article 1 of the International Covenant on Civil and Political Rights, the Government of the Republic of Indonesia declares that, Consistent with the Declaration of the Granting of Independence to Colonial*

*Countries and Peoples, and the Declaration of Principles of International Law concerning Friendly Nations and Cooperation Among States, and the relevant paragraph of the Vienna Declaration and Program of Action of 1993, the words “the right of self-determination” appearing in this Article do not apply to a section of people within a sovereign independent state and cannot be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states.”<sup>73</sup>*

Indonesia, as a sovereign and independent state, thus will not allow a section of its people the right of political, economic, social and cultural self-determination to the extent that it would harm the unity of the state.<sup>74</sup> The government hence maintains tight control over the determination of the status of *masyarakat hukum adat* and the exact definition of the term, be it as indigenous peoples or otherwise. As a consequence, the same goes for the status of *adat* land.<sup>75</sup>

Another case supports the symbolism of the state as the highest indigenous authority. On 13 September 2007, Indonesia belonged to the overwhelming majority of nations that ratified the United Nations Declaration on the Rights of Indigenous Peoples. The Indonesian representative explained Indonesia’s position thus:

*(Indonesia) noted that several aspects of the Declaration remained unresolved, in particular what constituted indigenous peoples. The absence of that definition prevented a clear understanding of the peoples to whom the Declaration applied. In that context, the Declaration used the definition contained in the International Labour Organization Convention, according to which indigenous people were distinct from tribal people. Given the fact that Indonesia’s entire population at the time of colonization remained unchanged, the rights in the Declaration accorded exclusively to indigenous people and did not apply in the context of Indonesia. Indonesia would continue to promote the collective rights of indigenous peoples.”<sup>76</sup>*

This statement confirms the above observation that the Indonesian government is not intending to grant far-reaching rights of self-determination to specific groups. Moreover, it defines Indonesia’s position as ratifying the rights of the entire population of non-migrant descent as indigenous peoples, rather than acknowledging a specific position for a minority group. Although this does not mean that recognition of *adat* rights in one way or another is impossible, the emphasis on equality of the population does little to suggest that such recognition might be forthcoming in a structural sense.

<sup>71</sup> See <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C169> for ratifications.

<sup>72</sup> The Indonesian government has *de facto* succeeded in neutralising the provisions of the Convention, but it remains to be seen whether this interpretation can be maintained in the future. As the Convention is international law, it is not up to an individual nation’s government to come up with a definition. In case an international institute charged with interpreting of the Convention is established in the future, Indonesian civilians might be entitled to appeal to this institute to request a reconsideration of their government’s explanation of the Convention’s provisions.

<sup>73</sup> See <http://www2.ohchr.org/english/bodies/ratification/4.htm#reservations>.

<sup>74</sup> Again, it can be questioned whether international law allows for the Indonesian government to interpret Article 1 in a way that limits part of the population in practicing their cultural identity. In the absence of an international institute tasked with judging disputes arising from the interpretation of the Convention, however, the matter remains largely academic.

<sup>75</sup> Yet when is the state being harmed? This question offers space for negotiation and movement.

<sup>76</sup> See the report at <http://www.un.org/News/Press/docs/2007/ga10612.doc.htm>.

## International customary law?

Indonesia's stance is not uncommon in Southeast Asia, where numerous nations maintain that the large majority of their populations are indigenous (Xanthaki, 2003). Malaysia has an Aboriginal Peoples Act intended to protect its mainland indigenous *Orang Asli* population group and local legislation dealing with indigenous groups in the Bornean states of Sabah and Sarawak continues to be developed. The Philippine Indigenous Peoples Rights Act (IPRA) recognizes various rights of indigenous groups (Nah, 2008; Eide, 2006:183). In both cases, however, the reach of the laws is limited to the national context and implementation is piecemeal at best. Contrary to regional organisations in Africa or the Americas, ASEAN (Association of Southeast Asian Nations) has never issued decisions or statements concerning the rights of indigenous peoples within the Southeast Asian region.<sup>77</sup> Kingsbury's (1998) analysis of the grounds for opposition among Asian governments provided three major kinds of arguments: definitional, practical, and policy related. The definitional arguments are concerned with indigenous as entailing prior occupancy and pose problematic associations of indigenous peoples with the baneful effects of European colonialism. The practical arguments see that it is impossible, or at least misleading, to attempt to identify prior occupants of countries or regions with extensive histories of movement, migration and melding. Policy arguments maintain that recognizing rights on the basis of prior occupation for specific groups will set in motion and legitimate claims by a vast range of groups and thus undermine other values with which the state is concerned. Notably the last argument, concerned with the potential destabilizing effects of recognition of rights of certain groups and not of others, is a powerful and troublesome issue when considered from the viewpoint of the guardians of state integrity. Nonetheless, Asian governments may have to come to grips with the issue of indigenous peoples' rights because of the compelling authority of international customary law.

Bedner and Van Huis (2008:169) point out that large donors such as the World Bank and the Asian Development Bank are in the process of developing policies applying the standards set in ILO convention 169 on indigenous and tribal peoples.<sup>78</sup> For Indonesia at least, this will mean increased pressure to ratify international standards. Moreover, the scope and impact of international law may well be deeper than this. Anaya (2004:61-72) argues that legislation such as ILO convention 169 may create obligations for ratifying governments only but that it has set standards for the dialogue with indigenous peoples, which has been maintained continuously over the past decades. This situation, Anaya feels, has resulted in

the crystallization of norms of international customary law as a "preponderance of state and other authoritative actors" has converged on a common understanding of these norms and expect future behaviour to be in accordance with those norms. Ratification would then no longer be the issue as common understanding and shared norms of the majority would supersede the individual state's position.

Although I find Anaya's argument compelling from a theoretical perspective and international customary law is binding, I wonder whether it will hold in practice in Indonesia. Many governments appear to take the view that indigenous rights are an internal rather than an international affair. As some of the more famous disputes over indigenous rights discussed in chapter 2 –Australia, Tibet, Palestine– illustrate, indigenous rights in national legal orders are not an issue in which foreign governments are keen to actively interfere. Nonetheless that does not, and should not, stop indigenous communities in non-ratifying states appealing to ILO convention 169 or other international legislation, as such appeals do support Anaya's argument. Moreover, it is of vital importance to such communities to generate international standing if they are willing to supersede the legal order of their national state. Can, as Meijknecht (2001:20-21) asks, a sovereign state that itself poses a great danger to minorities' and indigenous peoples' status, be entrusted with their protection? The answer has to be negative. What such groups need, then, is legal personality independent from the state in which they live in order to be able to appeal to international law. Notably in international law, there is a major difference between the validity of law and the possibility of enforcing this validity. For the groups discussed in here, the lack of access to means of enforcement is a major obstacle.

## Legal possibilities

In the case of communities aspiring to recognition of indigenous rights in Indonesia, various international laws and treaties apply that could shape the meaning and status of indigeneity in Indonesia. First and essential to defining the existence of indigenous rights is the right of all peoples to self-determination, a right that is laid down in several of the individual laws that make up the United Nations' International Bill of Rights.<sup>79</sup> The extend and meaning of the right to self-determination is, however, a complex issue.<sup>80</sup> It is not clear whether the right to self-determination is meant as a political or rather a legal principle (Falk, 200:121) and, as such, brings the aspirations of indigenous groups in conflict with state

<sup>77</sup> In the Americas, the Inter-American Commission and Court have been of great importance in advancing and upholding indigenous peoples' rights. The Inter-American Commission on Human Rights has adopted a provisional draft of an American Declaration on the Rights of Indigenous Peoples in 1996. Although the declaration has not been officially passed as yet, jurisprudence based on the Inter-American human rights system has strengthened the collective rights of indigenous peoples in the Americas. The African Commission on Human and Peoples' Rights adopted a resolution on the rights of indigenous populations in Africa in 2000. This resolution provided in establishing a working group of experts on the rights of indigenous communities in Africa, which has the mandate to examine the concept of indigenous communities in Africa, study the implications of the African Charter on Human and Peoples' Rights on the well-being of indigenous communities and make suitable recommendations for the monitoring and protection of the rights on indigenous communities (Eide, 2006:173-177).

<sup>78</sup> See World Bank (2001) and Asian Development Bank (2002).

<sup>79</sup> The International Bill of Rights refers to the rights of individuals and is an essential instrument to the United Nations' human rights regime. The right to self-determination is proclaimed in two United Nations covenants; Articles 1 of the International Covenant on Civil and Political Rights (ICCPR) and Article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). See Keal (2003:114-118) for an extensive discussion.

<sup>80</sup> Essentially self-determination envisions sovereignty of a group in certain matters which would usually be the prerogative of the government. For a group living within a state self-determination would hence be established within the authority –and with the permission– of that state's government. Joseph et al. (2004:149) point out that self-determination can be envisioned as a 'sliding scale' from internal self-determination (people within a state) to external self-determination. Different peoples hence have different levels of self-determination.

sovereignty.<sup>81</sup> Keal (2003:131-136) illustrates this opposition through United Nations General Assembly Resolution 1514 which asserts in Article 1 that “all peoples have the right to self-determination by virtue of [which]....they freely determine their political status and freely pursue their economic, social and cultural development.” Article 6 however curbs these rights by stating that self-determination is not to go against the existing territorial boundaries of states or disrupt states’ national unity. The right to self-determination is thus limited by overriding interests of unity of the state. With regard to indigenous peoples the Resolution can be seen as urging states to involve such group in such decisions as affect them, but it is not a legal tool to provide indigenous peoples with a right of self-determination approaching autonomy. Further definitional clarity of the concept thus is required .

A similar situation concerns Article 27 of the International Covenant on Civil and Political Rights (part of the International Bill of Rights). This Article provides for the right of minorities to enjoy their own language, religion and culture. The content of the Article thus provides support for self-determination, but brings the problem that indigenous peoples are not necessarily willing to equate their status to that of minorities within a state. Accepting minority status can have further consequences in that it brings indigenous groups closer into the legal framework of the state and so decreases their autonomous position in arguing for self-determination.

Until the ratification of the United Nations Declaration on the Rights of Indigenous Peoples, the only binding legal instruments dealing explicitly with indigenous rights were ILO Conventions 107 and 169.<sup>82</sup> Neither has been ratified by Indonesia, nonetheless both should be included here for the development of argumentation that is to come. Convention 107, dating from 1957, has been ratified by 27 countries, mainly from Latin America, Africa and the Middle East but including two European countries as well. The convention binds ratifying states to give attention to the interests of indigenous peoples in a wide variety of matters, and imposes state obligations with regard to indigenous land rights, development, displacement and employment issues. However, the text of the Convention limits the protection of indigenous rights in favour of integration. The effect of the protection of indigenous rights offered by the Convention could hence be nullified if ‘integration’, a vague concept in itself, warranted it. The Convention’s text does not involve indigenous peoples in such decisions as might affect them. Its overall effect seems to be not so much the protection of indigenous people and their rights, but rather to adjust or at best moderate the general development of nation states as a whole where this was found suitable.

In 1989 a revision of Convention 107 was adopted by the ILO as Convention 169. Compared to Convention 107, Convention 169 provides an inclusive tool for dealing with indigenous rights and sets important standards in the field of international law. Among others, Convention 169 establishes guarantees for non-discrimination, protection of individual rights, political participation, the right to decide on economic development, rights of land ownership, rights of furthering education and

healthcare, communication with society at large and the legal personality of indigenous groups. Moreover, the Convention pays far-ranging attention to collective rights in addition to individual rights, thus establishing a position for indigenous groups and communities to act as legal bodies where the protection of their rights is concerned. Convention 169 further instructs that the protection of indigenous rights should take place in cooperation with the peoples concerned, making sure that it is not –as was the case in Convention 107– the government that decides what is best. Convention 169 applies to (Article 1):

- a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs and traditions or by special laws or regulations;
- b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations who inhabited the country, or the geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their social, economic, cultural and political institutions.

The inclusion of tribal peoples next to indigenous peoples as beneficiaries of the Convention was made deliberately to sidestep the arguments of various nations that they had no specific indigenous groups within their boundaries, but did have tribal groups (see Xanthaki, 2008:72). Indonesia is one of the nations using this argument, as the explanation of Indonesia’s position at the ratification of the United Nations Declaration on the Rights of Indigenous Peoples illustrates.

Bedner and Van Huis (2008:169) suggest that Indonesia resisted Convention 169 because of the self-defining criteria of Article 1b, as literally millions of Indonesians could qualify and subsequently claim rights. Endorsement of the Declaration on the Rights of Indigenous Peoples, which does not contain a definition, avoided such potential problems. The Declaration resembles ILO Convention 169 in that it lists rights of indigenous peoples and charges states with the task of protecting these rights for such indigenous groups as reside in their territories, but it goes further in arranging relations between such groups and the state. Indigenous peoples are stated as having the right of autonomy, of self-determination (Article 3), of internal and local self-government (Article 4) maintaining and strengthening their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the state (Article 5). Moreover, indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples (Article 7) and have the right not to be subjected to forced assimilation or destruction of their culture (Article 8). States are charged with redressing previous wrongs to indigenous culture or religion (Article 11.2), ensuring that indigenous peoples can take part in relevant political, legal and administrative proceedings (Article 13.2) and with consulting with indigenous groups through their own representative institutions in order to obtain their free, prior and informed consent before adopting measures that

<sup>81</sup> The right to self-determination is likely intended as a legal principle as it is included in the text of binding treaties rather than in the preamble, where a mainly political usage would place it.

<sup>82</sup> See Xanthaki (2008:49-90) for an extensive discussion of ILO Conventions 107 and 169, Anaya (2004:58-60) on Convention 169.



may affect them (Article 19). States are charged with giving far-reaching attention to the position and preservation of indigenous cultures –among others through education in the indigenous culture and language (Article 14.3)- as well as in dealing with indigenous land claims. Article 26 decrees that indigenous peoples shall have the right to the land and resources which they have traditionally occupied, to which the state is to give legal protection. The Declaration instructs states to consider claims in a fair and transparent process in conjunction with the indigenous peoples concerned and give due recognition to their laws, traditions, customs and land tenure systems and to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources (Article 27).

In the case of Indonesia, all this may be of little or no value if it is maintained that there is no special category of indigenous people within the population. Nowhere in the Declaration is any reference made to tribal people, the presence of which is recognised within Indonesia's boundaries, so the official position that Indonesia endorses a Declaration that does not pertain to its national affairs may come across as a solid argument.<sup>83</sup> However, there might be an the Declaration's Article 1 may raise an impediment to this line of reasoning:

*Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.*

If we follow Anaya's argument on the standardisation of norms that international customary law has set with regard to indigenous peoples, Article 1's reference to the recognition of indigenous peoples enjoyment of all (human) rights and freedoms as expressed in the field of international human rights law may be considered to include the ILO Convention norms as well. Under these circumstances the statement on Indonesia's position on the Declaration may well be insufficient to keep indigenous peoples from legally existing within its state boundaries. Yet establishing an official presence as indigenous peoples and successfully claiming such rights and protection as the Declaration and ILO Convention 169 provide will be far from easy. Meijknecht (2001:25) observes that indigenous people will require access to international law and courts should they ever want to have grievances addressed by an international body. International legal capacity, international legal personality and international *jus standi*<sup>84</sup> will be required of any indigenous party by an international legal order for that order to be able to attribute rights to that party. The UN Declaration on the Rights of Indigenous Peoples gives some indications of the possibilities. Articles 19 and 20 state that indigenous peoples have the right to maintain their own representative institutions which can act as discussion partners for state governments, thus indicating possible legal personality. Articles 37 and 40 indicate potential for international forums. Article 37 decrees

that Indigenous peoples have the right to the recognition and enforcement of treaties and agreements concluded with states and to have states honour such agreements.<sup>85</sup> Article 40 states that Indigenous peoples have the right to access to just and fair procedures for the resolution of conflicts with states. Decisions are to give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned as well as to international human rights. Although no forum is indicated or tasked with settling such claims, the international level becomes likely if the conflict is with the national state. Meijknecht (2001:211) argues that a broad interpretation of *jus standi* is required in order to provide indigenous groups with access to the European Court of Human Rights (for European indigenous peoples) and the International Court of Justice (for states only). A broad usage of *jus standi* allows for the inclusion of the UN Human Rights Committee, the UN Working Group on Indigenous Populations, the UN Economic and Social Council or regional bodies such as the Inter-American Commission on Human Rights and the Inter-American Court.<sup>86</sup> Representatives of indigenous communities or NGOs speaking on their behalf can participate in the Working Group's meetings. The Working Group is not authorised to hear complaints in a judicial procedure, but it can act as a forum through which grievances of ethnic minorities can be brought under the attention of the UN or the world at large. Should Indonesian communities claiming indigenous status want to address these forums, a number of strategies are conceivable.

## Vehicles

Keck and Sikkink (1998), studying international advocacy, discern transnational advocacy networks that work according to a 'boomerang pattern'; national NGOs bypass their own government and contact international allies who put pressure on the government from outside, making it more difficult for officials to ignore the matter. In the case of indigenous peoples in Indonesia, two major organisations stand out.

AMAN, the Indigenous Peoples Alliance of the Archipelago (*Alliansi Masyarakat Adat Nusantara*), was founded in 1999 following the first national congress of *adat* communities. AMAN's main functioning is as an umbrella organisation connecting *adat* communities and NGOs throughout Indonesia, and providing a forum for the discussion of the role of *adat* and the place of *adat* communities within Indonesia today. AMAN equals *adat* communities (*masyarakat adat*) to indigenous peoples, as the translation of the UN Declaration of the Rights of Indigenous Peoples on

<sup>85</sup> As the Declaration on the Rights of Indigenous Peoples is neither, it is likely that this Declaration is not included.

<sup>86</sup> For Indonesian indigenous peoples the choice is rather limited. No regional bodies exist as yet and whereas Indonesia is a member of the United Nations, it does not allow the United Nations Human Rights Committee to interfere in national affairs. The UNHRC oversees the ICCPR (see note 79) and is qualified to consider claims by groups or individuals who maintain that their rights as defined by the ICCPR have been violated. This allows citizens to bring a case against their government before the Committee, provided that state has signed or ratified the 1966 First Optional Protocol to the ICCPR, which gives the UNHRC this competence. Indonesia has done neither.

<sup>83</sup> However, the meaning and definitions of the content of an international Declaration is not up for independent interpretation by individual states. Unclear concepts are subject to international law in general and must be explained according to accepted definitions.

<sup>84</sup> The legal capacity to protect the own interests at the international level.

AMAN's website makes clear.<sup>87</sup> The organisation strives for recognition of *adat* rights to land and natural resources, official recognition of the right to self-government through *adat* law for *adat* communities, and the right of self-determination of *adat* communities. AMAN is not an activist NGO in the sense that they organise demonstrations or frequently petition the government. Much of its activities evolve around facilitating meetings and programs involving members of regional organisations, discussions and, up to a certain extent, lobbying the government. Although there are other NGOs like AMAN that also advocate a more secure position for *adat* communities, AMAN's nationwide network is a strong asset. Moreover, AMAN has a strong international reputation. It maintains connections with international scholars as well as with various international indigenous communities organisations and is sponsored by the Ford Foundation. AMAN operates on the national level and may not be inclined to choose a confrontational strategy and appeal to international juridical institutions or United Nations agencies in order to further its goals. Its support can however be valuable in local settings in Indonesia where the 'boomerang pattern' of advocacy is regularly applied. At the village level or the regional level an AMAN delegation can add strength to *adat* claims made by local individuals or *adat* groups. In most cases such support would come from AMAN's provincial representatives or even from representatives within the region itself.

A second potentially useful forum is the Asian Indigenous and Tribal Peoples Network (AITPN) located in New Delhi, India. Like AMAN, the AITPN is primarily a facilitating organisation that strives to bring together regional and national organisations. AITPN focuses on indigenous peoples and tribal organisations throughout Asia. Its stated goals are twofold. AITPN aims to create greater capacity in indigenous peoples through training programs for activists and community leaders and through providing legal, political and practical advice. Its wider strategies concern the generation of international political attention for the issue of indigenous peoples in general and especially indigenous peoples in Asia. The AITPN aims to report relevant issues to international human rights institutions and the United Nations, thus providing input into international standard-setting processes on the rights of indigenous peoples. The organisation has Special Consultative Status with the United Nations Economic and Social Council (ECOSOC), and is connected to national indigenous peoples NGOs throughout most Asian countries. Connections between the AITPN and Indonesian NGOs exist, although I am at present not aware of the AITPN bringing specifically Indonesian issues to the attention of ECOSOC.

### 3.8 Concluding remarks

The official law that governs access to land is a complex arrangement of laws and regulations authorizing especially regional and provincial governments, the NLA and the Department of Forestry. Overlapping in the authorities provided in different

laws, wordings that can be interpreted in various ways and fierce competition between the different agencies make that control over land as well as its governance is an over-regulated field which is likely to frustrate civil servants and land users alike. However, the situation provides opportunities for regional governments, villagers and land users in general in that it becomes possible to refer to other authorities in case initial ones prove to be uncooperative. Consider the following situation: a villager in the mountains of East Kalimantan wants to open up a plot of forest to make a new field. Referring to official law, he could approach the following authorities:

	pro	contra	location	enforcement
The NLA	Certification gives an official right and offers (some) protection against eviction.	The Forestry department can maintain that it, rather than the NLA, has authority over the forested mountains. Also, the NLA lacks actual power to enforce its decisions.	Decentralised office in regional capital: remote from mountains.	No independent power to enforce its decisions.
The Forestry Department	Community forestry provides an official status.	Only possible through a corporation, quite uncertain whether the Forestry Department will provide such a right	Decentralised office in regional capital: remote from mountains.	Forest police, unlikely these will visit a remote area.
District head	Official in a position of responsibility towards the region who has relevant authority.	Authority is disputed by the NLA and Department of Forestry.	Office in regional capital	Local police and civil servants, can visit a remote area
Village head and council	Local officials that are easy to contact with authority over village land.	Decisions can be overruled by all the above authorities.	Same village	Support of villagers
Adat leaders	Local people that are easy to contact and have authority over adat land.	Decisions can be overruled by all the above authorities.	Same village	Support of adat community Support of NGOs

For our villager, contacting village or *adat* authorities hence might be the most sensible option. As all other authorities are remote and frequently lack the means to enforce their decisions locally, the costs of travelling to obtain such a permit may not be worth the trouble.

<sup>87</sup> See [http://aman.or.id/index.php?option=com\\_content&task=view&id=52&Itemid=1](http://aman.or.id/index.php?option=com_content&task=view&id=52&Itemid=1). The Declaration's title is translated as *Deklarasi Perserikatan Bangsa-Bangsa Tentang Hak-Hak Masyarakat Adat*.

Things are more complex for an agricultural company wanting to set up a new plantation and needing more land. For them the official authorities, in the case of plantations usually the Department of Forestry, are the first to apply to. If, however, the land they are hoping to use is subject to existing NLA permits, concessions given out by the regional authorities or *adat* claims it is likely that the company will have some more negotiation to enter into, regardless of the permission of the Department of Forestry. Overlapping laws and diffuse authorities see to that.

The possibilities of authority

The wide-ranging possibilities for regions to promulgate legislation and taxation regarding a highly diverse range of subjects make that throughout the nation administrative entities have come into being that undermine the authorities of the national-level NLA, the Department of Forestry and, occasionally, the central government. Aside from the untransparent legal situation, a major issue is the level of these organisations at which authorities are located: whereas the government administration is decentralised to the regional level and to a lesser extend to the provincial level, both the NLA and the Department of Forestry maintained a centralised structure in which regional-level offices exist, but are relatively powerless to act. At the regional level these two bodies hence have little direct impact, as most of their actions need to go through the central office in Jakarta.

The setting that the legal environment and different levels of decentralisation create, make authority relevant at three different levels. First is the national level. The central government is tasked with supervising its lower echelons and can remove officials and annul regional legislation. Likewise, the NLA and Department of Forestry have their authority over land and forest land affairs in the regions. However, these three need to deal with the legislation and decisions that the hundreds of regions promulgate. When the central government confronts a region it is the highest authority but for the central government to keep track of all that goes on at the regional level is a virtually impossible task. The second level is that of the region. As the legislation indicates, regional government has considerable autonomy in managing its affairs with very limited central government control. With regard to land, the relation between the local NLA and Forestry officials and the district government is a factor of importance. If the NLA and Forestry personnel maintain a strong focus towards their superiors in Jakarta they can find themselves at the sideline of local affairs and in overt competition with the district government, whereas a cooperation between all three can effectuate an administrative trinity in land affairs that maximizes the boundaries of regional autonomy. Regional authorities may and sometimes must refer issues and decisions to the provincial authorities or even to the highest level in Jakarta, but the legal situation that resulted from *reformasi* gives them the possibility to do so pragmatically. If the various relevant bodies at the regional level engage in cooperation, a considerable amount of authority can be concentrated at an effective spot.

Finally, there is the level of the village. Many villages tend to function as small largely self sufficient units that maintain control over a certain territory. As the example given at the beginning of this paragraph showed, obtaining access to a plot

of land within the boundaries of the village’s territory might be most efficiently arranged through local authorities, be it village-level government representatives or *adat* leaders. These authorities can exist in a variety of cooperative and competitive relations, especially since the RAL introduces a wider space for *adat* structures at the village level. Like the regional-level officials, village authorities can refer to higher echelons in the government hierarchy yet here as well there is space to do so with certain pragmatism. Especially villages that are located at a certain distance of the regional capital are rarely visited by regional officials, making the exchange of information an affair that is largely under the control of such authorities as can be found in the village.

Law, although essentially absolute, is applied by individuals in specific positions to the purpose of attaining certain goals. This shapes what is done and what is omitted. The relationship between references to law and the goals aspired to are analysed in the following chapters, in which the laws and legal conditions that have been introduced in this chapter form the main legal setting.

Meaning for the research

The laws discussed in this chapter provide a framework for authority over land in which relations between state bodies such as the Department of Forestry, the NLA and regional governments with *adat* communities and the population in general are laid down. It has become clear that these relations are problematic: laws contain vague formulations and leave procedures unclear. Laws overlap and allow competition among official bodies to exist; a situation that quite likely hampers efficient and impartial enforcement and is at least in part the cause of frictions between officials and the population. As this chapter closes the theoretical, introductory part of the book, this is a place to reconsider the questions I asked in the beginning.

1.

*Has decentralisation influenced the normative dimensions of access to land in the regions of East Kalimantan?*

It most certainly has. The RAL, the revised Forestry Law and the ongoing discussion on the revision of the BAL and an increasingly vocal population demanding recognition of their –*adat* or otherwise- rights to occupy and use land, are vivid proof of this. The questions that arise from this are:

1.

Are people in the regions aware of these discussions and changes taking place?

2.

How do these legal and possibly high-flying discussions impact the daily reality of access to land at the grassroots level?
2.

*Which normative systems are applied?*

What the torrent of *reformasi*-era legislation means for the normativity in the regions and the villages is far from clear. We know that new official laws introduced changes to the systems of administration and forest management, and that land management under the BAL is likely to follow suit.

We also know that *adat* has come to the fore with a vengeance, and that the changes introduced by the RAL generated considerable confusion in the regions. Hence:

1. Which of the various official laws pertaining to access to land is applied? Do varying conditions make for varying choices of laws?
2. What is the role of *adat* when it comes to access to land? Is this role different from what it was before *reformasi*?
3. Do *adat* and official law engage with each other and –if so– how?

3. ***Who applies normative systems, why and how?***

We know that regional leaders have gained much autonomy from the RAL. It is reasonable to suspect that the influence of regional elites –political, religious, ethnic or other– has increased as well, now that the control by the central government has slackened. Also, as many laws define conditions under which recognition of land rights might take place but omit to mention the relevant authorities, there seems to be a power-vacancy of sorts in that field. Also, where in all this are the court and its judges? The stage par excellence, one would expect, to provide directions in unclear legal matters.

1. What is the role of heads of regional government?
2. What is the role of elites, and what are they?
3. What is the role of the courts?
4. Are there other influential roles apart from these, and, if so, what do they do?

4. ***What influences do social, economic and political circumstances have on the implementation and observation of land tenure, and which factors explain their role?***

The Southeast Asian economic crisis was an important factor for the end of the New Order regime. Social tension or outright violence in other areas of Kalimantan has impacted access to land and local governments. Influences outside of the legal sphere can have great impact on its implementation.

1. How does the presence of resources impact access to land?
2. How do control over land and social power correlate?
3. How do control over land and political influence correlate?
4. What influence does the population have?
5. Are non-legal factors applied to influence the legal process?

Before these questions are addressed in the empirical chapters of the book, I will discuss the relevance of the research settings in the context of these issues in the next chapter.



# Regions to the fore 4

## Positioning Paser and Nunukan

In this chapter I provide a general introduction to the province of East Kalimantan and the two districts of Paser and Nunukan. Specific attention is given to the economy, history, and social and ethnic make-up of each of these three areas in order to leave the national level of Indonesian society and provide a more localized introduction to the main areas of research. The chapter is intended to provide a background to the material discussed in the rest of the book, and as such serves to clarify the strategies chosen by parties in conflicts, as well as to show the potential for public support that various actors managed to turn into a power base. A main goal is to show how the coastal and inland areas differ substantially in all of these fields, and how this consequently gives rise to differing strategies in the establishment of power bases.

The first two sections deal with shared background issues: circumstances in East Kalimantan and the identity of local indigenous groups, commonly referred to as Dayak. The sections on Paser and Nunukan discuss these two districts comparatively, focussing on each district's history, economy, forestry sector and population.

### 4.1 East Kalimantan

The province of East Kalimantan is one of the largest, richest, and least populated provinces of Indonesia. Whereas its Gross Regional Domestic Product (GRDP) is surpassed only by those of the industrialized, heavily populated provinces of Jakarta, West, Central, and East Java, its population density of eleven inhabitants per square kilometre makes it one of the most sparsely populated Indonesian provinces, only surpassed by the province of Papua.<sup>1</sup>

The province's riches originate from its natural resources industries. Largely covered in primary forest, the province was opened up to logging companies from colonial times onwards. Even so the province largely remained a colonial backwater until the discovery of extensive oil and coal reserves in its coastal areas caused a boom in its development.<sup>2</sup> After Indonesian independence the increased technical developments in natural resources extraction techniques allowed for increased expansion of coalmining and gas and oil extraction to multi-million dollar industries involving international companies. The easily accessible forests were heavily logged as well, with the province's large rivers providing an excellent transport infrastructure. From the seventies onwards this expanding logging industry controlled by the political and military elite (cf. McCarthy, 2000) took hold

<sup>1</sup> See Indonesian Statistics Centre (*Badan Pusat Statistik*) website at <http://www.bps.go.id/index.shtml>.

<sup>2</sup> See Magenda (1991) for a discussion on the importance of oil for the local aristocracy and Lindblad (1988) for a discussion on East Kalimantan's colonial economy in general.

of East Kalimantan’s extensive forests (cf. Manning, 1971; Potter, 2005) and when the availability of prime logging concessions decreased from the eighties onwards, plantations came to the fore.

In colonial times the first small-scale rubber plantations had been laid out on land opened up in the wake of logging activities, and whereas rubber remained a local product it was especially oil palm that was considered as a promise for Indonesia’s future (cf. Sato, 1997; also Casson, 2002:223-229). Extensive palm oil plantations were developed in logged over forest areas throughout the coastal areas. To a lesser extent and often of more recent date, pulp wood and iron wood plantations have been brought into cultivation. Although government officials in various districts have recognised the economic and environmental dangers of oil palm monoculture and therefore aim at a more diverse agricultural sector, introducing change is not easy. Many oil palm companies operate with permits that were provided by the national Ministry of Forestry before *reformasi* and regional autonomy, which places them largely beyond regional government control for the duration of the permits’ validity. Moreover, oil palm yields provide considerable taxes to the district treasuries. A decrease of oil palm growths will instantly influence regional revenues, and thus poses a considerable impediment to the implementation of limiting measures.

Society

Apart from its extensive reserves of natural resources and its oil palm plantations, East Kalimantan is generally known in Indonesia for its ethnic Dayak population. Provincial and district governments alike have adopted an imagery that is rather outdated, as will be discussed in the following section, to symbolize the symbiosis of national government and regional culture. As a product of the best-known indigenous population group, Dayak figurative ornaments have, almost by default, become the insignia of government buildings throughout East Kalimantan. Giant Dayak war shields decorate the provincial military headquarters in Balikpapan, while stylised hornbill birds and dragon figures decorate the facades of government offices throughout the province. The roof of Balikpapan’s international airport has been shaped and decorated after a Kenyah Dayak longhouse, while the national independence monuments in Balikpapan and Samarinda feature distinct Dayak warriors armed with *mandau* (Dayak swords) and shields protecting the Indonesian freedom fighters.

Dayak culture is thus a distinct part of provincial government symbolism and closely intertwined with popular images of the province throughout Indonesia. It would, however, be incorrect to call East Kalimantan a Dayak province. Its sparsely populated lands and economic potential have for centuries attracted migrants from other parts of Indonesia and have, since independence, been the destination of various government sponsored immigration programs. The percentage of migrants living in the province is therefore high. Whereas no single ethnic group has an absolute majority in the province, all migrant groups together decisively outnumber the indigenous population. A simplified overview of the ethnic groups that make up the province’s population (after Suryadinata et.al, 2003:24-25) gives the following results:

	Ethnic Group	Percentage
1	Javanese	32,47
2	Sulawesians	20,22
	(mainly Bugis and Toraja)	
3	Others	19,9
4	South Kalimantanese	13,94
	(mainly Banjarese)	
5	Indigenous non-Dayak groups	11,43
	(Kutai and Paserese)	
6	Dayak Kenyah	2,04
Total population is 2,441,533		

Ethnic groups of East Kalimantan (figures of 2000) <sup>3</sup>

The only group labelled ‘Dayak’ are the Dayak Kenyah who form the largest, but far from the only, Dayak group in the province. It is therefore reasonable to assume that a sizeable part of the groups making up the category of ‘others’ can be classified as Dayak as well. If the definition was broadened to indigenous groups in general, as is often the case with *adat* movements, a maximum approaching 47,31 percent of the total population could be included.<sup>4</sup> Nonetheless this number is still a minority compared to the sizeable Javanese and Sulawesian groups, and it presupposes a coherence that does not exist in reality. Nor can ‘Javanese’ or ‘Sulawesians’ be set to be clearly distinguishable groups: depending on area of origin, dialect and religion, these categories consist of a wide variety of ethnic sub-groups. In addition, a sizeable percentage of the non-indigenous groups will be second or even third generation migrants whose ancestors moved to the province in earlier times. Inter-marriage is fairly common and a ‘*gado-gado*’ descent – after a popular mixed vegetable dish – is frequently claimed.

Yet even if actual ethnic identities have become diffuse, the ethnicities of the various ancestors that make up the *gado-gado* descent will be as well-known and identifiable as the individual vegetables mixed together in the dish. A clear ethnic distinction that is popularly perceived to exist is that between Dayak and non-Dayak. Roughly speaking, the coastal areas and the cities are where most of the migrant population lives, while various areas in the hinterland have a distinct Dayak majority. In other parts Dayak form sizeable minorities of a mixed population.

This distinction between Dayak and non-Dayak has its origins before the 16<sup>th</sup>-century. Historians of the area (cf. Assegaff, 1982; Eisenberger, 1936) report how

<sup>3</sup> In 2000 a census was held in which ethnicity was included as a factor. This was not done before and has not been repeated afterwards.  
<sup>4</sup> Combining the South Kalimantanese, non-Dayak and Dayak Kenyah as well as the category of ‘others’.



Buginese trading fleets from nearby Sulawesi were attracted by the rich trade in forest products coming out of the interior. The trade took place through existing local Sultanates located along the mouths of the large rivers where they controlled the streams of goods coming from the interior. Several of these sultanates, notably Paser and Kutai, are thought to have had their origins in Javanese colonies established possibly centuries earlier by expeditionary forces of the powerful Javanese Majapahit Empire (cf. Sather, 1971). As that empire crumbled, the colonies became independent coastal sultanates that embraced Malay culture and Islam once it arrived in the archipelago. Along Kalimantan's east coast, numerous Buginese traders and immigrants established themselves, leading to various Buginese sultanates from Sulawesi in turn established dependencies in the coastal areas.

Such coastal indigenous groups as the Orang Kutai and Orang Paser (see table 1), or the Banjarese from South Kalimantan, took up Malay culture and Islam through these contacts. Several Buginese settlers of noble descent married into these indigenous royal families, or were granted permission to start subservient Buginese sultanates along the coast. Often the coastal sultanates would claim authority over territories in the hinterland as well, but how far their influence actually reached dependent on a variety of economic conditions and personal power. Powerful sultans needed to be able to actively assert their rule, by means of arms if necessary, and defend it against threats both from within and outside the area.<sup>5</sup> The sultanates were oscillating empires (cf. Heine-Geldern, 1956) the territory of which varied in size according to the capacities of the ruler. The groups of the hinterland rarely harboured special tokens of attachments to the coastal rulers. Different in identity, culture and language the sultans functioned as **'stranger-kings', whose popularity and power in the hinterland depended on their diplomatic capacities and military prowess rather than on ethnic or kinship ties with the groups living there.**<sup>6</sup>

Whereas some indigenous groups, notably those living near the coast, over time adopted the culture and religion of the foreign sultanates, others kept their distance from the coastal power centres and moved upriver towards the hinterland. Hence, a popular (coastal) outlook sees development moving from the coast to the 'wild interior', where uncivilized and primitive communities still dwell.

## Economy

Economic development also follows this direction. Trading in jungle products from the interior to the coast still takes place, but its importance is eclipsed by that of the natural resources industries moving the other way – inland from the coast and disseminating along the banks of the great rivers. Whereas some of the first oil palm plantations in coastal zones have been exhausted and have stopped bearing fruits,

mountain dwellers in the interior areas are planting oil palm trees in their forest gardens with the intention of selling its fruits to the coastal factories. Similarly, few large sawmills are left in the coastal urban centres. The logging companies have moved to the inland forests and taken much of the industrial activities with them.

As migration increased after independence, the coastal parts of East Kalimantan developed at a distinctly higher and more diversified pace than the interior of the province. Enterprising migrants set up extensive fish and shrimp farms, pepper plantations (Vaydah and Sahur, 1985) and brick factories to supply the growing urban centres (De Jonge and Nooteboom, 2006: 460–462). Today, the central cities of Balikpapan and Samarinda are fed with the eggs and chicken bred in battery cage farms catering to the urban centres, and the non-Muslim parts of the population with the produce of large pig farms at the edge of Balikpapan.

Many inland groups continue to remain dependent on jungle products and shifting cultivation. Most of the market oriented economic activities developed here consist of limited small holders' sale of forest produce and surplus garden products. The majority of the population there are subsistence farmers focussing on producing for their own needs rather than for the coastal market. Many inland communities have traditionally held a local, rather than an outward, view, which in part can be explained by the expenses of transport and the frequent lack of transport possibilities.

Moving inland from the coast, the settlements grow smaller. Ethnic diversity decreases as the number of indigenous groups increases. In some areas proportions are about equal, yet in many others indigenous groups hold clear majorities. Notably in the more remote areas of the province, the majority of the population are Christian Dayak. Many of these are subsistence rice farmers who have received basic education at most. As such, the low level of education of these hinterland groups explains their under-representation of students in high school and civil servants in local government.

The social divide between the hinterland and the coastal areas thus has ethnic, economic, religious and educational dimensions, which only a minority of Dayak manage to overcome. Gaining prominence in the coastal society and providing a gateway for hinterland interests to enter there is a sure way for Dayak individuals to establish themselves as prominent figures among the hinterland communities. Hinterland support, in turn, can add to one's standing in coastal circles. Those Dayak capable of achieving status in both areas are provided with excellent credentials to enter regional politics.

## The rise of regionalism

The issues of indigenous and local identity have impacted East Kalimantan in two major ways. First is a resurgence of Dayak and other forms of indigenous identity, which are emphasized in regional politics and pressure groups. The second is an increased demand for local administrative autonomy within the province. Before regional autonomy, East Kalimantan's regions used to cover huge territories that combined various regional centres and communities into one administrative unit.

<sup>5</sup> Threats from outside included pirate fleets, neighbouring rulers or groups from the interior attacking the inland groups paying tribute to the sultan. If the sultan failed to protect them, these groups could stop paying, place themselves under the protection of a rival ruler or move to another territory. The well-documented history of the raj of the Brookes in Sarawak gives countless examples of the rise and fall of coastal sultans. See for instance Barley (2002) and Payne (1960).

<sup>6</sup> Henley (2004:87) describes stranger-kings as "paramount chiefs of alien origin or descent who...owed their positions partly to their aloofness from local rivalries and their ability to provide relatively impartial conflict resolution.

Following regional autonomy, many of these large regions split up into smaller ones. Lack of social coherence and administrative practicalities (distance to the administrative services available in the regional capital for instance) were often stated as the underlying reasons, whereas the province's booming natural resources economy ensured the regions of the necessary financial means to support their own regional bureaucracy.

The province itself suffers from a lack of identity and social coherence as well, which the economic possibilities of regional autonomy have brought to the fore. East Kalimantan's northern half is markedly less populated than its southern part. It has more evenly spread populations as it lacks such large coastal centres as Balikpapan and Samarinda in the south. The north has large stretches of forest, oil, gas, and a variety of other natural resources. It also has extensive oil palm, rubber and pulp wood plantations, fish and shrimp breeding farms and, because of its location, extensive international trade in these goods with Malaysia and the Philippines. Voices have been raised in a number of East Kalimantan's northern regions to form the independent province of North Kalimantan (*Kalimantan Utara* or *Kaltara*).<sup>7</sup> Economically this would mean that more tax revenues collected in the new province would directly benefit the area, rather than be allocated by the present East Kalimantan provincial government in southern Samarinda. Regional politicians in the north feel that their attempt to link into the regional international economy is often frustrated by the more nationally-oriented provincial government in Samarinda. As an independent province, the balance between national and international interests would be a local responsibility. The movement also reflects the different ethnic composition of the areas. The northern regions have a lower percentage of migrants among their population when compared to the south: the new province thus would have a significant indigenous element that could bring considerable influence to bear in provincial politics.

The provincial government of East Kalimantan in Samarinda has agreed to support the establishment of the new province, a decision for which officials stated two main reasons.<sup>8</sup> The first is an economic one. The southern half of East Kalimantan is well-developed and produces the main share of the province's income. The northern half has potential, but this largely still needs to be realised. Losing the northern half would mean a major release of East Kalimantan provincial funds. The south does not need the north's economic potential, so losing the major expense required to bring the north up to the south's economic level would provide immediate benefits to the south's economy.

The second argument, not based upon the first's economic optimism, maintains that powers in the north have prepared their secession attempt well. It is suggested that ethnic Dayak leaders have conceived and strategically planned the event because they want to keep Kalimantan's riches for their own people. Hence they have worked to have East Kalimantan's governor dismissed from his function and to have him replaced by the vice-governor, who is a Dayak. The vice-governor

then supported his fellow Dayaks' aspirations for the north.<sup>9</sup> The first, more than the second argument seems to offer a plausible answer. Nonetheless the second argument, although suspiciously resembling a conspiracy theory, holds some truth in that the vice-governor undeniably is more engaged with the Dayak population and society of East Kalimantan, and more receptive to requests and suggestions, than the governor was.

Until recently, the plan was thwarted by the refusal of the northern district of Berau to cooperate. Decentralisation Law 32/2004 decrees that for a new province to be established the minimum number of regions that must join is five, and without Berau the northern region included only four.<sup>10</sup> Yet the 2007 creation of the new district of Tana Tidung (discussed at greater length in the section on Nunukan), whose government will vote in favour of the new province, may have made North Kalimantan's official establishment a matter of time.<sup>11</sup>

Social, political and economic dynamism are vital factors to East Kalimantan's immediate future. Clear lines are, despite a heightened importance of ethnic identity and regionalism, difficult to distinguish. Throughout the area, district and local governments strive to increase the economic status of the territory under their administration and the new international course plotted in North Kalimantan could bring major changes to life in that area. This largely depends, however, on how society, politics, and relationships with Indonesia's centre will develop.

## 4.2 Defining Dayak

'Dayak', as an ethnic category, originated as a pejorative term used by Bornean coastal dwellers to refer to interior and upriver pagans. It was appropriated by the Dutch and English colonial administrations respectively (King and Wilder, 2003:209). By the time of Malaysian and Indonesian Independence, the term was firmly in use as an ethnic and religious distinction that designated the non-Muslim, non-Malay original inhabitants of Borneo, who generally live in the interior of the island (cf. King, 1993:29-30). The foreign origin of the term is well illustrated in Sellato's (2002) work on 'Dayak Cultures'. Apart from incidental generic usage, Sellato shows how those considered to be 'Dayak' distinguish among themselves dozens of ethnic groups and sub-groups, each having its own proper name, who often do not see themselves as related to one another in any way.

The term had derogatory qualities. Among coastal dwellers Dayaks were known for their fearsome half-naked appearance and their head-hunting raids, the grue-

<sup>9</sup> In 2006 provincial governor Suwarna Abdul Fatah, an ethnic Javanese, was suspended on charges of corruption while his day-to-day tasks were observed by the vice-governor Yurnalis Ngayoh. Dayak organisations were highly visible in the public protests leading to Suwarna's suspension and although the court found him guilty (cf. Kompas, 23 March 2007) of corruption in relation to a large oil palm estate project (Tempo, 26 June 2006) a stubborn rumour maintained his innocence and forwarded allegations of a Dayak plot instead. The issue is dealt with at greater length in chapter seven.

<sup>10</sup> The other four are the districts of Bulungan, Malinau and Nunukan, and the municipality of Tarakan. Apparently Berau would only join on the condition that it would be allowed to accommodate the new province's capital, a position also claimed by Tarakan as the northern economic centre. The ensuing stalemate saw little openings for a continuation of negotiations.

<sup>11</sup> See Antara (2 October 2007) and Koran Internet (26 December 2007).

<sup>7</sup> See on the possibility of this new province for instance *Kaltim Post* (2003 and 2004) and the 2005 supportive reaction of the governor of East Kalimantan (Pemerinta Propinsi Kalimantan Timur, 2005).

<sup>8</sup> Personal comments by members of East Kalimantan's provincial parliament.



some trophies of which were retained to adorn their longhouses in the forest. 'Dayak' therefore traditionally evokes associations of backwardness, dirtiness, violence and barbarism (Peluso, 2003) – a stigma that is taking its time to wane. Missionaries added their bit by converting the Dayak majority to various creeds of Christianity – from fundamentalists in the mountainous interior to more syncretic versions in which Christianity and indigenous beliefs merge together (cf. Chalmers, 2006b).

It was (and is) possible for Dayak to lose their Dayak identity. Dayak can become Muslim and associate with Malays – a process known as *masuk Malayu* (to enter Malayness). Over time they will be considered Malay, rather than Dayak (Sellato, 1989:20). Many of the Brunei Malay, for instance, originate from the pagan population inhabiting Borneo's western coast (King, 1993:31) while many of the Orang Banjar of Banjarmasin, staunch Muslims and Malay, descend from coastal Dayak groups in South Kalimantan (Hawkins, 2000). *Masuk Malayu* had its advantages for those Dayak wanting to rise in the Malay-dominated civil services of Indonesia's Kalimantan, or otherwise become more fully accepted into the coastal societies.<sup>12</sup> Yet, as Tanasaldy (2007) and Widen (2002:116–120) show, from the early 1990s onwards and following the fall of Suharto and *reformasi*, Dayak throughout Kalimantan – but notably in West and Central Kalimantan – gained in ethnic confidence. Culminating in, among others, the dramatic Dayak-Madurese riots in those provinces. This newly found confidence also encouraged converted Dayak Muslims to maintain their ethnic identity rather than becoming Malay (Chalmers, 2006b:19–22).

### Pan-Dayakism

Ambitious elements within the Dayak movements aim to mobilise a pan-Dayak identity that unites Dayak groups into acting as a coherent social force vis-à-vis non-Dayak (Thung et al., 2004; Schiller, 2007). Education, telephone, the internet and other modern means of communication enable such developments. The need for Dayak cohesion, its supporters feel, is bigger than ever. Government development plans hold little space for indigenous rights and claims, while the numbers of non-Dayak living on Borneo put pressure on Dayak lands and traditions. The grounds for pan-Dayakism are thus in place: threats to Dayak cultures, livelihoods and territories. Do these combine Borneo-wide to fuel a supra-local abstract Dayak identity? A number of potentially unifying arguments can be distinguished.

First is the ethnic argument, closely intertwined with notions of Bornean indigeneity. This argument presupposes the existence of a coherent Dayak ethnic group. It sees the Dayak as the indigenous population of Borneo, a status they share with some other groups such as the Banjarese from South Kalimantan, the Malay along the west coast and the Kutai in the east who are, however, ethnically different.

<sup>12</sup> Christian Dayak working with the local government in Pontianak (West Kalimantan), at the provincial governor's office of East Kalimantan and at a number of Kalimantanese universities pointed out to me that senior functions were always filled by Muslims, not Dayaks. They experienced their ethnicity and religion as factors limiting their career possibilities. However, in districts with a more or less equal division between Dayak and non-Dayak, such as Kutai Barat or Nunukan (both in East Kalimantan), a similar division among ethnic lines of positions within the local bureaucracy guaranteed stability within society.

Most others are immigrants who have settled on Bornean lands, often without indigenous consent, who are so numerous that they have made Dayak a minority on the island. As a minority, Dayak activists argue, what remains of their culture and lands will be swallowed up by government development and immigrant cultures.

Second is the legal argument, which is usually presented as an illegal or unjust use of Dayak lands by the state or by immigrants. This argument relates to local legal consciousness rather than to a critique of the application of a legal system. As many Dayak live in rural areas with limited access to education, general ideas about law and legality are largely formed by local, often customary, normative systems. Those actions undertaken under national law that influence local arrangements are not necessarily considered as 'law' in the sense of correct practice. Rather, they are associated with power, which is controlled by an abstract elite of (non-Dayak) state officials unsympathetic to, or uninterested in, the problems and arrangements of the people in the village. As a direct result, the legal argument sees Dayak lands as unjustly limited by the state and by non-Dayak migrants after Dayak land.

Closely related to the legal argument is a third, economic, one. Many of Kalimantan's extensive forest areas have been logged, with profits failing to trickle down to the Dayak groups living in the areas. In addition, the workers carrying out the actual logging are usually immigrants brought in for the job, offering few local Dayaks the chance of a job with the companies. Many groups used the forests for hunting and gathering, as well as for laying out gardens and rice fields. The type of rice farming conducted in much of Borneo's interior is dry rice farming, or shifting cultivation. After using a plot for one or two years it must remain fallow for at least five years to recuperate. Fields are cleared on a yearly base in the forest, thus making it necessary for a small group to have access to a relatively large plot of forest in order to sustain itself. After logging many forest areas have been transformed into large monoculture enterprises (rubber or especially oil palm), thus limiting the land and forest available. Many local protests were staged, although few were successful. A higher level of mobilization, it is felt, might put more weight in the scale.

Yet the plan to mobilise a pan-Dayak identity is hampered by its inherent high level of abstraction. As pointed out above, most Dayak first consider themselves as part of a specific ethnic group rather than of a 'Dayak' whole. The numerous Dayak groups are divided by different languages, customs, and religions, many having histories of communal warfare. In addition, the administrative make-up of Borneo means that Dayak groups are citizens of three different nations – Indonesia, Malaysia and Brunei – while they do not form the population's majority in any of them. Developments in West and Central Kalimantan have shown Dayak groups to unite in dealing with other ethnic groups, but this appears to be brought about by opportunism and personal ambitions rather than by conscious planning.

A border-crossing, transnational Dayak identity seems even more remote. The internal circumstances in all three nations differ in such ways that a pan-Dayak movement representing the interests of all Dayak groups would be so widely stretched in its purposes as to render it quite ineffective. Transnational Dayak contacts do exist on a considerable scale, yet these mainly concern intra-group matters among Dayak groups living in two or more nations. Examples include the

Iban living in West Kalimantan and Sarawak, the Kenyah in Central Kalimantan, East Kalimantan and Sarawak, and the Lundayeh of East Kalimantan, Sarawak and Sabah. The parts of such groups living on opposite sides of the border frequently cooperate and can make the existence of the border as much of an opportunity as it is a hindrance (see Eilenberg, 2006; Thung et al, 2004:69-71).

The formation and mobilization of a pan-Dayak ethnic identity is thus closely linked to the needs and desires of those groups that qualify as Dayak in East Kalimantan and elsewhere in Borneo. As Maunati (2004:93-97) points out, those people who qualify as 'Dayak' today were not necessarily seen as such by themselves or others in the recent past. Not in the least due to the associations it includes, Dayak identity is, like any other identity, fluid and interchangeable and has become more complex and diverse in recent history.

### 4.3 The district of Paser: Paser Buen Kesong<sup>13</sup>

Paser is the southernmost district of East Kalimantan. Its territory borders the districts of Paser Utara Penajam and Kutai Barat to the north, the provinces of South and Central Kalimantan to the south and west, and the Strait of Makassar to the East. The district's main geographical features are a flat stretch of fertile land along the coast that gives way to the steep northern stretch of the Meratus mountain range, known locally as Gunung Lumut, to the north and west. In 2002 Paser lost around a quarter of its territory and almost forty percent of its population when its northern stretch became part of the independent district of Paser Utara Penajam, a new district consisting of northern Paser (Paser Utara) and the Penajam area that used to be part of the municipality of Balikpapan.

In 2006, Paser's territory covered some 11,600 square kilometres and had a population of 176,000, most of whom are farmers living on the flat, coastal land.<sup>14</sup> The district's capital is the city of Tanah Grogot, which also is the main commercial and administrative centre. A number of large market villages have developed along the provincial road that bisects the district and connects Balikpapan and Samarinda to Banjarmasin, the capital of South Kalimantan. Small villages are scattered throughout the district, but mainly on the plain and along the coast.

Governance over the population and lands of Paser is a complex affair. Most of the land in the district is qualified as forest land and hence under the authority of the Ministry of Forestry. However, at the time of the research authorities did not share a map showing the borders between forest land and non-forest land, making the borders of National Land Agency and Department of Forestry authorities quite vague affairs.

<sup>13</sup> *Paser Buen Kesong* (Paserese for 'Paser has a kind character'), has been the district's motto since 2004. It replaced the more martial Indonesian words *Daya Taka*; powerful attitude.

<sup>14</sup> All numbers in this paragraph are, unless stated otherwise, taken from Badan Pusat Statistik Kabupaten Paser 2003 and 2004, and from the website of Paser's district government at <http://www.Paser.go.id/>.

### 4.3.1 The population

These days, the coastal plain around Tanah Grogot houses a multi-ethnic society, with sizeable minorities of Paserese, Buginese and Javanese. The indigenous population of Paser, the Paserese or *Orang Paser* do not stand out among the Javanese and Buginese in the coastal area, where Muslim Malay influence has been strong for centuries. Away from the coast, however, the plain rises into the steep Gunung Lumut Mountains. Although the area covers some 25 percent of Paser's territory, only around 10 percent of its population lives there.<sup>15</sup> Very few migrants settled in the mountains. The terrain was not suitable for extensive plantations and the logging companies that worked in the area needed mobile, not settled, employees. The steep inclines and lack of good roads, combined with a population known for its fierceness and black magic skills, made the mountains an unpopular destination among migrants. Communities living there consist of ethnic Paserese with a few individual migrants, often men married to local women, in their midst. Here people consider themselves to be related to Dayak groups living further inland and although most Paserese in the mountains are Muslims, many still hold indigenous spiritual beliefs as well.

The various Paserese communities in the mountains claim specified territories as their ancestral *adat* lands. Each community lives in a village located within the borders of its territory. These territories border one another, thus leaving no unclaimed land between them. The villages are governed by both government village heads and traditional *adat* leaders, and many individuals feel that they have little need for more government involvement in the village. Villagers practice swidden cultivation in which fields are cleared in the forest, used for one or two years, and then left fallow allowing the forest to regenerate. As state influence and government control are still comparatively weak in the mountains, many of Paser's mountain communities state that local *adat*, to a greater or lesser extent, regulates and mediates their lives. Strictly speaking, *adat* is subordinate to national law, but the mountain communities have often benefited from their remoteness and lack of governmental presence to apply *adat* norms alongside, or instead of, such law.

In the mountains the district government is a real, yet remote, authority. Past experiences with the government-approved logging companies have instilled the notion that the central and district governments hold more power than the community.<sup>16</sup> At that time, the communities had no leverage with the district government and hence saw no option but to accept these adverse policies. Most accepted any such compensation as the logging companies offered in exchange. Although these were felt to be far too low, they were considered to be better than nothing at all. After the loggers moved on, the communities reclaimed control of the land, albeit with feelings of distrust towards the district government. As no repercussions or government objections followed, the general feeling in Gunung Lumut nowadays is that the district government tacitly agrees to these *adat*-based land

<sup>15</sup> Personal estimate based on data of the Paser District statistics agency.

<sup>16</sup> The logging licenses to the area were issued by the central government, yet in the mountains the district government was perceived of as just as responsible in the matter.



Oil Palm nursery in Paser  
(Photo: J. van den Ploeg)

claims and that its main interest is in capitalizing upon the forests. Regional autonomy brought the political world of the district literally to the front doors of Gunung Lumut's villagers. Although the mountain communities remain marginal and lack the capital and connections that are available to other participants in the political process, NGO support helped them to gain some influence in regional politics. The remoteness and poor infrastructure severely limit contact with the government, and among the mountain communities themselves. Nonetheless each group holds ideas and assumptions regarding its neighbours and the government, and snippets of news travel to and fro. Clearly, not all the information acquired in this manner is correct or complete by the time it reaches the recipient. Ignorance of important developments or misunderstandings arising through a lack of information are thus a common result at both ends of the line.

### Paserese prominence

As an ethnic group, the Orang Paser have come to prominence since decentralisation. Although a minority, the Paserese emphasize indigeneity and, in recent years, Dayak identity as well. A number of organisations has been established that all claim to represent the interests of the Paserese population group.<sup>17</sup> Their results are mixed, but notably two, the LAP (*Lembaga Adat Paser* or Paser Adat Foundation) and the PBA-PDS (*Pertahanan Benua Adat - Paser Dayak Serumpun*, Defence of our Adat – Dayak Paser Branch, hereafter PBA) have gained the ear of the government. Presenting themselves as *adat* leaders, the heads of the LAP and PBA are fierce rivals, both resenting and disputing the other's knowledge and status. Strictly speaking, however, both organisations may have a problem with their claim to represent the Orang Paser as a whole. Both have supporters in the coastal plain in and around Tanah Grogot, reaching as far as the foothills of the Gunung Lumut Mountains, but neither of the organisations has ever bothered to visit the communities there.

They have good reasons for this – most of the Gunung Lumut communities support a small local *adat* organisation named PeMa (*Persatuan Masyarakat Adat Paser*, Union of Paserese *Masyarakat Adat*), led by a local school teacher descended of a family of respected local *adat* leaders. PeMa cooperates with the national *adat* organisation AMAN. The leaders of the LAP and PBA are well-known in the mountains. Not for their knowledge of local *adat*, but rather for their claims of representation and of being the paramount Paserese *adat* authorities. However, the mountain communities see no need to actively oppose the claims and assertions the LAP and PBA state in the coastal areas, as long as these organisations refrain from attempting to impose their authority in the mountains.

### 4.3.2 History

Paser has been a migration destination for centuries. The Paserese have a myth narrating how at one time they desired to have a single ruler to govern them all

instead of the host of small fiefdoms ruled by petty chiefs of the time. As they could not find a suitable candidate in their midst, they looked outside of Paser. After all delegates had returned from their mission empty handed, a foreign princess was sent into their midst by magic means. This princess married a prince of the kingdom of Giri on Java, making it likely that Paser's remote past is one of subservience to that kingdom (in 't Veld, 1882; Nusselsein, 1905:565-566).

From the sixteenth century onwards Buginese from Sulawesi married into the royal family and turned the sultanate into one of a string of Sultanates ruled by ethnic Buginese along Kalimantan's east coast.<sup>18</sup> Although the royal family continued to call themselves 'Paserese', frequent intermarriages and a distinct orientation towards Sulawesi gained the rulers in their largely Buginese capital of Paser Balengkong a reputation as foreigners among the ethnic Paserese population.<sup>19</sup>

The sultanate was wedged in between the powerful sultanates of Kutai and Banjarmasin to the north and southwest respectively, and was part of a cluster of smaller, equally Buginese influenced, sultanates that made up the southernmost part of Borneo's east coast and hinterland. These sultanates were, depending on the political fortunes of the time, alternately subservient to Kutai, Banjarmasin or Buginese sultanates in Sulawesi, or independent (see also Nagtegaal, 1939:3-21, 1977:313).

In colonial sources, Paser is presented as an unruly and at times violent area, as is discussed at greater length in chapter nine. In the nineteenth century, southeast Kalimantan was the scene of various wars and uprisings, many of which were linked to the Banjarmasin War of 1859-1862.<sup>20</sup> The jumble of small sultanates was involved in many of these, not necessarily on the same sides. At various occasions bands of fighters of one of the factions used the hinterlands of Paser and the other sultanates as a guerilla base.<sup>21</sup> During such times the sultan's power base was limited to the main coastal area and it happened that dissatisfied subjects used the occasion to change allegiance.<sup>22</sup> Paser was not under the direct rule of the Dutch East Indies government at the time, but allied through contracts with its ruler.<sup>23</sup>

No permanent colonial representative was stationed in the sultanate until 1901, when a colonial government station with an armed police guard was constructed in an area called Tanah Grogot, a few kilometers from the sultan's main settlement of

<sup>18</sup> Veth (1854:258) writes that in 1620 the Buginese conquered Paser.

<sup>19</sup> For a more in-depth discussion of the history of the sultanate of Paser, see chapter nine.

<sup>20</sup> The Banjarmasin War started as a conflict of succession to the throne of the Sultanate of Banjarmasin, in which one party appealed to the Dutch colonial authorities for military assistance. It resulted in Banjarmasin becoming a region under direct rule of the colonial government.

<sup>21</sup> For instance, during the Muning war of 1859-1863 in which Sultan Kuning (or Sambang) and his troops held out against the Dutch and their allies in the south-eastern hinterlands for four years (see Tichelman, 1949:147-148).

<sup>22</sup> Eisenberger (1936) reports how in 1905 a group of Orang Paser living near the border with Kutai offered to change their allegiance to that sultan. An expeditionary force sent by the Sultan of Paser was just in time to prevent this from taking place.

<sup>23</sup> These contacts were not always well maintained. Bongenaar (2005:156-157) relates how in 1862 the sultan had to be reminded that all foreigners in his kingdom fell under the jurisdiction of the colonial authorities, and not under the sultan's administration of justice. Bongenaar omitted to mention the events leading to this message.

<sup>17</sup> The Paser NGOs are discussed at greater length in chapters five and eight.

Paser.<sup>24</sup> The protective presence of the police brought traders to settle and set up market in Tanah Grogot, and the post's commercial importance as a trading center at the expense of the royal market at Paser Balengkong increased until 1906, when the ruling sultan abdicated in favor of the colonial government. From that moment on Tanah Grogot became Paser's commercial and administrative centre.

### 4.3.3 Economy

Paser was a backwater of the Dutch East Indies. Remote from the government centre of Java and sparsely populated, it saw some development in the wake of the discovery of oil near Balikpapan and Samarinda. A number of relatively small rubber plantations were set up in the foothills of Gunung Lumut and the inter-provincial road was constructed, connecting the rapidly developing east coast towns of Samarinda and Balikpapan with the south coast's main city of Banjarmasin. In the early 20<sup>th</sup> century a few of Balikpapan's oil workers built small holiday houses in the foothills of Paser's mountains, but the long traveling time prevented Paser from becoming a weekend destination for Balikpapan's upper class. These days Paser is all but a holiday destination, although the district government is planning actively to change this (cf. Bakker, 2008).

Government sponsored transmigration programs between 1969 to 1978 brought waves of mainly East Javanese to East Kalimantan, who settled in and around Balikpapan and Samarinda. From 1979 onwards migrants were settled in more remote areas, including Paser, where they were expected to introduce permanent agriculture in place of swidden cultivation (Hidayati, 1994:57-58). From 1980 to 1984 Paser received 2,844 migrant families, while larger scale transmigration first took off when sites were planned close to new oil palm plantations. For the period of 1985-1989, the heydays of transmigration to Paser, the arrival and settlement of a staggering 15,576 migrant families in the three main sub-districts of the coastal plain was being planned (Badan Koordinasi Penanaman Modal Daerah Tingkat I Kalimantan Timur, 1989:21). The arrival of such large numbers of migrants was closely linked to the development of the district's agricultural sector, which was designated as the main employer for the transmigration schemes. From the 1990s onwards the growth of the palm oil industry continued to demand new workers, but at a less explosive scale. From 2000 to 2004, the number of transmigrant families was on average 844 families (around 3,500 people) per year.<sup>25</sup>

Not included in these numbers are the spontaneous migrants who came to the district, attracted by rumours of Paser's booming oil palm industry. Many of these came from Java, with others from Sumatra, Sulawesi and Nusa Tenggara. Although the district government did not encourage spontaneous migration of individuals without means of support, it proved impossible to prevent or to map it accurately.

<sup>24</sup> This was the start of the town of Tanah Grogot, the village of Paser is nowadays called Paser Balengkong.

<sup>25</sup> However, these also included an undetermined number of transmigrants resettled from other sites, local people moving on to transmigration locations and independent immigrants joining government schemes (personal communication by transmigration service staff).

Some of them set up businesses in the urban areas or found work in the agrarian sector, others were admitted to government migration schemes, still others departed again. All in all, Paser's population grew from 125,600 in 1987 to 176,000 in 2006, or some two percent per year on average.

In 1984 Paser had almost 14,000 hectares of plantation, most of which were planted with coconut, rubber, coffee and cloves. Only 3,200 hectares were oil palm gardend. Yet the following years saw extensive oil palm plantations being developed in Gunung Lumut's foothills and in the central coastal plane at breathtaking speed, making palm oil Paser's main agrarian product. The size of Paser's palm oil areal has more or less stabilized. Recent years saw a growth from 56,244 hectares in 2003, to 58,641 in 2004, followed by a decrease to 56,901 hectares in 2006. As oil palms are found to exhaust and drain the earth, Paser's government is encouraging a gradual product shift to increase diversity.<sup>26</sup> New plantations are urged to plant other crops. Rubber and coconuts are officially encouraged, but pepper, coffee and ginger are being grown on modest scales as well. Rubber and coconut, the former main products, take a remote second and third place to palm oil. Rubber went from 6,169 hectares in 2003 to 6,349 in 2004 and, as a result of the diversification policies, to 14,542 in 2006. Numbers for coconut plantations are lacking for 2003 but 4,155 hectares were recorded for 2004. By 2006, again largely due to agrarian diversification, coconut plantations had increased to 9,585 hectares.

In recent years, Paser's main income was generated by mining (65,51 percent of the district's income in 2006 against 33,6 in 2005) rather than the agrarian sector (19,6 percent in 2006). The mining industry consists mainly of open pit coal mining, and is carried out by a small number of national and international companies in the coastal plain. It provides work to only a small faction of the population though, as much of the work is far too specialised to be accessible to unskilled workers. Unskilled labour is, however, in demand in rock quarries, which exist in a few places in the mountain foothills. Gold panning is also carried out in some upstream areas, but in recent years the local population of many of these territories has started to deny non-local gold seekers access, or to demand compensation for their presence. In addition, the district contains limestone quarries, some oil reserves and nickel supplies. Notably the nickel exploitation, which for the most part is yet to commence, is considered to be promising.

### 4.3.4 Forestry

Logging remains important to Paser's economy, but its actual scale or monetary value are hard to determine. As indicated above, logging has been a highly important industry in East Kalimantan but has gradually been replaced by oil palm plantations. Administrative decentralisation has brought a proliferation of legislation relating to forest and forest usage, as well as a multiplication of the number of stakeholders authorized to issue logging permits. Paser's annual statistics present

<sup>26</sup> Personal communication with officials of the Paser's district government's plantation service.





Logging truck passing through Mului village in the Gunung Lumut Mountains

the total acreage assigned to each type of forest usage and report the total production of logs. Logging as such is, however, not included as a separate source of district revenue, but is included with either mining or agriculture.<sup>27</sup> Logging is a sector with a shady and illegal side to it. Despite the government's best efforts, its official figures on logging are notoriously inaccurate both within forest conditions and total production. There is no way the cubic metres logged without a government permit will appear in official statistics, or that the complete actual income of all involved can ever be unveiled. However, official figures are a useful resource when it comes to interpreting official forest policies.

A comparison between the 1985 and 2004 government figures of 1,079,840 and 628,730 hectares respectively, show a decrease of total forest size of 42 percent. This ties in with the general approach of the time to consider forest mainly as an economical resource.

### A conservation district?

The future of Paser's forest may have taken a radical turn following the district head elections of 2005, when Ridwan Suwidi was elected and embarked on a course of government with a keen interest in nature conservation. By 2006 the goal of realising Paser as a 'conservation district' (*kabupaten konservasi*) was included in the district government's four-point mission statement.<sup>28</sup> This goal is explained as:

*The mission of becoming a Conservation District intends to have the District of Paser become a district which esteems highly the principles of conservation, as in exploiting energy sources for continuous development based on sustainable usage, protection of the life support system, and conservation of the biodiversity. On the other hand the goal of this mission is to guard the conservation area so the aforementioned area can participate and function in increasing the prosperity of the community.*

The West-Kalimantan district of Kapuas Hulu coined the concept of a 'conservation district' in 2004. The East Kalimantan district of Malinau followed suit in 2005, making Paser the third district to adopt the concept. Essentially, a conservation district is an administrative area that has the political commitment to pursue development based on sustainable utilisation and the protection of life support systems as well as the preservation of biodiversity (TBI-Indonesia, 2006:36). There are good practical reasons, in addition to nature conservation, for following such a line of action. In East Kalimantan deforestation has contributed to floods, mudslides and forest fires. As members of Paser's planning agency commented while explaining the district government's choice to a Jakarta audience, logging activities yielded the district some seven billion rupiah, whereas repairs to the infrastructure after the yearly floods cost as much as 41 billion rupiah (*Kompas*, 9 July 2005). The implicit promise

27 Personal communication with officials of the Paser's district government's statistics agency.

28 See <http://www.Paser.go.id/?pilih=hal&id=3>

of more government budget available for other purposes and explicit promises of some of those funds for specific goals gained the plan substantial support among the population in the areas that were to be designated for conservation. However, the concept is still vague. No exact descriptions of its goals, procedures and the balance between economy and conservation have been formulated (cf. Moeliono, 2006; Muhajir, 2007). The concept has met with positive and expectant responses from Indonesian and international nature conservation organisations. The manner of its implementation and its expected results are thus eagerly awaited.

By proclaiming Paser a conservation district, its government risked a crisis with the Department of Forestry as, essentially, it appropriated the authority over all forest in the district. As, however, the proclamation was made with the necessary tact to the forestry officials as well as with considerable local popular support and a media offensive, the regional forestry office decided to support the proclamation. Whether the Ministry of Forestry itself has provided a reaction is however unclear.

## 4.4 The district of Nunukan: Penekindidebaya<sup>29</sup>

Nunukan became an independent district in 1999, when it was detached from the large district of Bulungan.<sup>30</sup> It is the northernmost district of the province of East Kalimantan and borders Malaysia's Sabah and Sarawak to the north and west respectively, and the Indonesian districts of Bulungan and Malinau to the south. It measures some 14,000 square kilometres and has a population of 106,323.<sup>31</sup> The district's coast is dominated by Nunukan city, located on Nunukan Island a few kilometres out to sea from the mainland. This is the location of the district government's offices and the economic centre of the district. The majority of the coastal population consists of migrants, mainly Buginese from Sulawesi, Javanese, and Banjar from South Kalimantan, but members of nearly all Indonesian ethnic groups can be found here. This is not because Nunukan itself is such an attractive migration destination, but because the island is a hub for immigrant workers to Malaysia.<sup>32</sup>

Large parts of the area have since been converted into oil palm and pulp wood plantations. In the recent past, logging was the one major industry in the area. Today 87 percent of the district's territory is still qualified as forest land and is hence under the control of the Ministry of Forestry. Of this land, 36,7 percent (453,937 hectares) is no longer forested. It is qualified as non-forest culture land (*kawasan budidaya non-kehutanan*). Pulp wood plantations use part of it, but large

29 The district's motto of *penekindidebaya* means 'developing the area' in the language of the local Tidung population.

30 Law 47 of 1999 on the establishment of Nunukan district, Malinau district, Kutai Barat district, Kutai Timur district, and the municipality of Bontang.

31 Numbers for 2003 (Badan Pusat Statistik Kabupaten Nunukan, 2003).

32 Nunukan's one claim to international attention in its short existence relates to an emergency situation involving repatriated illegal workers in 2002 (see Tirtosudarmo, 2004) since then crossing the border has become more difficult.

stretches have no official usage.<sup>33</sup> The inhabitants of these areas, which are mainly lowland upriver territories, are mostly Dayaks but numerous migrants have settled there as well and gave the lowland villages an ethnically diverse population.

By contrast, the remote mountainous hinterland was left undisturbed by both loggers and oil palm companies as the mountains' inclines were too steep and remote for logging, planting or cost-effective road construction. Notably the sub-districts of Krayan and Krayan Selatan –known collectively as Krayan to the population– located in the far west of the district and bordering Malaysian Sabah and Sarawak, have seen very little of these developments. From the district capital these two areas can only be reached on foot (three weeks) or by aircraft (one hour) as none of the many rivers can be navigated far enough upstream and at present no roads lead far enough into Kalimantan's interior. There is, however, a road connecting Krayan's capital Long Bawan to the Malaysian market town of Pa'payet. The population of Krayan is oriented towards Malaysia and the Malaysian economy at least as much as towards Indonesia.



Transport in lowland Nunukan

The matter of the new province of Kaltara and the establishment of the new district of Tana Tidung have caused serious discussion in Nunukan.<sup>34</sup> Tana Tidung was to consist of the three northernmost sub-districts of Bulungan, and Nunukan's three southeastern sub-districts, but Nunukan's sub-districts declined at the last moment on the grounds that the new district would be too heavily associated with the Dayak Tidung, whereas the inhabitants of Nunukan's districts mostly belong to other ethnic groups.<sup>35</sup> Nonetheless the district of Tana Tidung, now consisting

only of the three Bulungan sub-districts, was formally established in the summer of 2007 through Law 34/2007.<sup>36</sup> Although just a small district (under 5000 square kilometres and 28,000 inhabitants), its establishment ensured that the legal minimum of five regions for establishing the new province of North Kalimantan was met. The final decision on the split lies with the Indonesian parliament, which is widely expected to agree to the establishment.<sup>37</sup>

#### 4.4.1 The population

Almost eighty percent of the district's population live in its two coastal sub-districts of Nunukan and Sebatik. Many of these people are migrants living alongside an extensive indigenous population. The Orang Tidung live in the coastal areas of Nunukan, and have recently started to refer to themselves as 'Dayak Tidung'. Their area of residence spreads out across the bordering districts of Tana Tidung, Bulungan, and the municipality of Tarakan. Upriver live Dayak Agabag and Dayak Tahol, as well as numerous smaller Dayak groups. The remote and mountainous districts of Krayan and Krayan Selatan are the homeland of the Dayak Lundayeh.

Indigeneity is an issue in Nunukan's society. In many of the mixed hinterland communities of Dayak and migrants the practised legal system is *adat*. As long as there are no, or few, migrants this poses no problem, but in those settlements where migrants make up a sizeable part of the population tensions over land usage, land ownership and the legitimacy of claims have arisen. The Tidung and Agabag populations are, for the most part, Muslims who have followed the dominant coastal Malay cultural discourse for decades. Following the emergence of Dayak identity as a strong and legitimizing label and the rise of the question of indigenous Dayak rights, Tidung and Agabag in Nunukan have increasingly begun to emphasize their Dayak roots. Other local Dayak groups, such as the predominantly Christian Tahol and Lundayeh, take a critical, if not sceptical, stance towards this change of identity. Dayak spokespersons in Nunukan have publicly questioned whether the Muslim coastal groups can claim Dayak identity.

This criticism does not stop the Tidung and Agabag, whose efforts seem to indicate a general broadening of the popular image of 'Dayak' to include non-migrant coastal Muslim groups and place emphasis on indigeneity to Kalimantan rather than on religion or location. Numerically speaking, this change of outlook could provide Dayak interests with substantial new support.

Haba (2005) researched and described Nunukan's coastal ethnic diversity and concluded that whereas developments towards a mixed urban population united through location, economy, society and religion appear to be underway, undertones of ethnic difference, envy and competition certainly do exist.

<sup>33</sup> Pulp wood plantations are not included in the official plantation figures. I have not been able to establish their sizes.

<sup>34</sup> See *Radar Tarakan* (17 February 2003)

<sup>35</sup> See *Kompas* (5 February 2007), *Banjarmasin Post* (6 February 2007). 'Tana Tidung' translates as 'Tidung Lands', causing objections by non-Tidung.

<sup>36</sup> *Undang-Undang 34 tahun 2007 tentang pembentukan kabupaten Tana Tidung di Propinsi Kalimantan Timur*. See *Kaltim Post* (18 July 2007) *Media Indonesia* (17 July 2007).

<sup>37</sup> See *Gatra* (3 November 2007), *Tribun Kaltim* (19 December 2007), *Radar Tarakan* (31 December 2008).

## The Lundayeh

Dayak maintain considerable political influence in Nunukan. The Lundayeh from Krayan have long been a dominant minority group in the area. Isolated as the area is from the rest of Indonesia, it is certainly not isolated from the world. Krayan has been the working field of, mostly American, protestant missionaries since before the Second World War. The mission organised education and provided scholarships for gifted students to continue their studies outside of Krayan. As a result, educated Lundayeh students emigrated from Krayan to take up professional lives in Indonesia's urban areas. Nowadays communities of Lundayeh exist in East Kalimantan's main towns of Samarinda and Balikpapan, but also as far away as Jakarta and Yogyakarta.<sup>38</sup> In East Kalimantan, army and police units are traditional employers of Lundayeh. By comparison with other Dayak groups in Nunukan, the relative isolation and ethnic unity of Krayan, the high number of educated professionals, and their contacts in army and police forces put the Lundayeh in a favourable position within the region. Early in 2006, three members of the 25-strong district parliament of Nunukan were Lundayeh, as were the vice-district head, two heads of district-level government departments and various senior and middle cadre government officials. Considering that the Lundayeh only make up just over eight percent of the district's population and have their homeland at the opposite end of the district from the government centre, their political and government representation is considerable.

Perhaps their remoteness has given the Lundayeh a historical advantage. When, in the early twentieth century, missionaries started work in northern Dutch Borneo their main targets were the remote areas where the Muslim coastal culture had not penetrated. Krayan fell under the American Christian and Missionary Alliance who sent their first missionary there in 1933 (Post, 1932:17). Evangelisation proved extremely successful to the extent that Krayan became a source of missionaries to other areas of Indonesia (cf. *The Pioneer*, 1977:14-15).<sup>39</sup> The mission also introduced education, and is locally credited with the great importance Lundayeh attach to education.

Krayan longhouses, in which several families lived together, were only replaced, under government pressure, with the common Indonesian village (*desa*) structure in the 1960s. The social structure inherent in longhouse life (see Crain, 1994:164-168) was at least in part incorporated in the local administrative structure, making the sub-district government of Krayan an inherently unique interpretation of Indonesia's national system in which *adat* authority retained a central position (see chapter six).

The Lundayeh of Krayan do not constitute a single, isolated culture. As Crain and Pearson-Rounds (2000) show, 'Lundayeh' as a term of identity refers to a grouping of various highland communities from East Kalimantan, Malaysia and Brunei. It is largely through outside perceptions that the groups have come to be seen as a

whole. Places, rather names as such are what define people and gives them identity. *Lun Dayeh* as such distinguishes upriver communities from *Lun Lod*, downriver ones. *Lun Tana' Lun* and *Lun Nan Ba'* set apart people living in hilly areas from those living in flat ones, and point out the different styles of agriculture that characterize each (cf. Crain and Pearson-Rounds, 2000). Communities in the highlands would be involved in inter-longhouse feuds and engage in mutual head hunting raids among themselves as much as with more remote other Dayak groups. Longhouse villages existed of a nucleus of constituent domestic families whom individuals and new arrivals could join. The community as such developed in relation to other, similar, villages. Residence, cognatic kinship and affinity defined communities and were maintained and confirmed through rituals, communal activities and marriage exchanges (Crain, 1994:165-166). Yet as younger generations dispersed and the founders of the longhouse passed away, it was quite common for longhouse communities to dissolve every couple of generations. Usage of land and the laying out of fields hence were not associated with a particular family or community in perpetuity, but subject to rights that could end with time. The organisation of large, labour-intensive agricultural projects in which the manpower of numerous communities would be bundled in exchange for a lavish feast ranked among the most prestige-giving feats in the highlands and could take the shape of extensive irrigation works (see Crain, 1973).



Not Dayak Tidung" in Southern Nunukan

Intermarriage, trade, and friendships across the international border are common. Many individuals have family members living in the neighbouring nation whom they frequently visit and Lundayeh communities on both sides of the Malaysia-Indonesia border share a rather similar cultural and religious outlook (cf. Amster, 2006). Both areas are mainly protestant and largely adhere to customary *adat*

<sup>38</sup> The exact number of Dayak Lundayeh in Indonesia is unknown. In Krayan people estimate their numbers around 10,000 for Krayan, and about the same number for the rest of Indonesia and Malaysia.

<sup>39</sup> Harrison (1959:337-339) suggests that Christianity and government filled the gaps left by those aspects of Central Borneo highland culture that were no longer permissible (e.g. warfare, headhunting) in a modern state – a situation that occurred in other Indonesian areas (cf. Bakker (2004) on Nias) as well.



rules. As a result, it is not uncommon for disputes between individuals to have an international character and be resolved by *adat* authorities from both nations. Border crossing and an international orientation are thus inherent aspects of Lundayeh identity.

However, international Lundayeh relations are impacted by events originating outside the highlands as well. A clear example is the aforementioned road constructed in 2003, which leads all the way from the Malaysian coastal city of Lawas to Long Bawan, the capital of Krayan. Malaysian traders, notably rice buyers, drive trucks all the way up to Long Bawan to buy Krayan rice directly from its growers, thus cutting out the Malaysian Lundayeh middle men (cf. Ardhana et. al. 2004:64-66). In an attempt to limit the amount of rice that passes without their intervention, Malaysian Lundayeh have responded by setting up toll gates and by levying a fee from everyone wanting to pass using a motorised vehicle, regardless of whether they are Malaysian coastal traders or Indonesian Lundayeh. Indonesian Lundayeh hence need to abandon their motorbikes or cars before crossing into Malaysia, much to their chagrin, and consider it humiliating to be made to drag their purchases, which may vary from foodstuffs to plastic piping or other building necessities, through the border town's main street and across the border.

#### 4.4.2 History

As a district not yet a decade old, the history of Nunukan comprises various areas that had little or no dealings with one another in the past. The greatest difference lies between the mountains of the interior and the coastal area, with the area of settlements along the banks of the area's main rivers forming a transition from the one to the other.

Northeast Borneo has been a trading zone for the Indonesian, Malay and Philippine regions from possibly as early as 1000 AD (Sellato, 2001:19). Its history is closely interwoven with the desires of rulers from all these areas to control this trade. Historically, the Sultanate of Bulungan dominated the coastal area of what is now Nunukan, a vassal of powerful Kutai.

The Sultanate of Bulungan came into being in the seventeenth century when a group of Kayan Dayak moved downriver and settled at the coast. The ruling family converted to Islam a century later, when one of its princesses married a nobleman from Brunei. The sultanate claimed control over the hinterland and interior as much as of the coast, although much of its control over the upstream areas existed in name alone. Bulungan built its wealth, like many other coastal sultanates, on controlling the trade routes between the interior and the coast, where international traders came looking for the island's forest products. As the Sultanate of Bulungan had its centre further south, foreign merchants established trading stations on several of its northern coastal islands, the islands of Nunukan and nearby Tarakan among them (see Sellato, 2001:16-19). Over time these stations became vassal sultanates to Bulungan.

Foreign powers eyed these small trading sultanates with interest (cf. Von Dewall, 1855:423-429). Bugis rulers were encroaching from the south whereas the northern coast of Borneo was effectively colonised by the mighty Philippine Sultanate of Sulu, but contested by the equally powerful Sultan of Brunei (Singh, 1991; Saunders, 2002). Like Paser in the south, the tiny Sultanate of Nunukan was wedged in between much larger powers.

In the second half of the seventeenth century Bulungan came under increased Buginese attack and when the Tidung moved further upriver the Bulungan sultanate eventually had to cede practical control of the northern regions to Sulu.<sup>40</sup> From 1860 decline set in. In 1850, the colonial Dutch authorities had forced the sultan of Bulungan to sign a political contract which allowed the Dutch to take over the sultan's powers and ended the sultanate's status as the northeast coast's major trade centre.

Dutch colonial interest in the area was aroused when English privateers, following the successful example of James Brooke in Western Borneo, had set about attempting to establish their own private sultanates in Northeast Borneo. Seeking, and gaining, permission from any of the sultanates claiming rights to the area, various adventurers made attempts to claim territories and establish British influence in the second half of the 19<sup>th</sup> century (see Black, 1985). Tensions over British and Dutch spheres of influence made it clear that a border needed to be established. Whereas there was consensus on the border in the coastal areas, hinterland borders were far from clear. The border of the Dutch territories with Sarawak and Brunei was loosely formed by the central mountain range.<sup>41</sup> Likewise, no clear demarcations had been established regarding the border with English North Borneo.

Those profiting from the unclear border situation were mainly raiders and merchants avoiding taxation. A well-described incident (for instance Alliston, 1966:144-145) tells how a group of indigenous Murut Dayak kept raiding into British North Borneo from, as local authorities believed, Dutch territory where the British could take no action against them. After establishing the boundary, it became clear that the group was in fact living in North Borneo. Likewise, groups living on opposing sites of the Sarawak-Dutch border in the west often raided each other (Grijzen, 1925:125), giving rise to at least two Brooke-sponsored expeditions of Sarawak Dayak against groups across the mountains in the Dutch territories (Harrison, 1959:90-91, 181-182). The colonial governments concluded a treaty defining the border between the Dutch East Indies, Sarawak and British North Borneo in 1891. **Whereas this treaty contained a good definition of the border with British North Borneo, the western border with Sarawak remained vague.** The border treaty only established that the watershed of the central mountains dividing the island was to be the border. It took two more treaties, in 1915 and 1928, before the border was established in detail. These treaties still form the base of today's Indonesia-Malaysia border.

<sup>40</sup> Why the Tidung moved is not clear. The Bugis raids may have been a reason, but establishing greater control over the upriver birds' nests caves is also possible (Sellato, 2001:3).

<sup>41</sup> Harrison (1949:129) reports overlaps of British and Dutch territories of as much as twenty miles when comparing various maps.



The mountains in Central Borneo, including the highland plain where the present sub-district of Krayan is located, have long been rather autonomous areas. The western part, the Kelabit highlands, had been annexed from Brunei by Sarawak in 1882 (Saunders, 2002:93; Singh:1991:81-105). The eastern part had come under the nominal control of the Dutch colonial government when it began to take over powers from the Bulungan sultanate. It was, however, not until 1933 that the area was made a sub-district outside of Bulungan, and a colonial official was stationed there.

The area's isolation and autonomy made it a theatre of allied commando activity during the final year of the Second World War when small teams of mainly Australian soldiers were parachuted in who organized, armed and led local Dayak against the Japanese forces stationed along the coast (cf. Harrison, 1959). Whereas before foreign nominal rulers – be it from Sarawak, the Dutch colonial government or Brunei – would be vague and abstract entities with little local presence or influence, the parachute droppings and the construction of airfields had brought the area within reach of these coastal authorities. The participation of the region's population in such a large conflict also showed that their isolation had become relative. That an actual international border existed in their midst was made painfully clear to the central highland population during the military conflict of *konfrontasi*, which made 'Indonesia' as well as 'Malaysia' very real and absolute identities in the local imagination (cf. Bala, 2002) and involved various armed actions in Central Borneo.<sup>42</sup> In the more peaceful present, however, the international division of the area provides its inhabitants with economic opportunities unavailable to citizens living in other areas of either nation, as will be discussed further on.

### 4.4.3 Economy

Nunukan's economy is largely based on its agricultural sector, in which local authorities include income from logging and other forest usage. The district exports vegetables and rice to Malaysia, but as most of this trade is carried out informally no hard data exist. Nonetheless this export forms a major source of cash income to the district's inhabitants, many of whom are subsistence farmers and have little or no other means of obtaining cash income (cf. Siburian, 2005:186).

Nunukan's (agrarian) plantations cover some 34,671 hectares, around 2,4 percent of the district's territory, and have been stable in size since 2000.<sup>43</sup> Over a third of the area (14,700 hectares) is used for oil palms, the second largest product is cacao (10,107 hectares) while other plantation products include coconut, coffee, pepper, cloves, vanilla and cinnamon. All of Nunukan's plantations are located in the coastal

area, while the more remote hinterland is virtually empty of plantation activities.<sup>44</sup> Since 2004, fish and shrimp farms have been greatly expanded in the coastal swamps. In 2006 18,960 hectares of fish ponds were in use and the sector continues to expand (Badan Perencanaan Pembangunan Daerah Propinsi Kalimantan Timur, 2006:7).



Oil Palm nursery in Paser (Photo: J. van den Ploeg)

42 See Conboy (2003:99-103; 115-17) on *konfrontasi* –an unofficial border war between Indonesia and Malaysia between 1963 and 1966- events in Long Bawan.

43 All numbers are, unless otherwise stated, taken from Badan Pusat Statistik Kabupaten Nunukan (2004). Officials at the district's forestry office pointed out that the state forest company PT Inhutani still maintained rights to develop 151,000 hectares of plantations from when Nunukan still was part of the district of Bulungan. At present, the involved district forestry offices were working on formalizing the necessary administrative changes together with the Ministry of Forestry in Jakarta and PT Inhutani's head office.

44 Two reasons can be given for this. First, the coastal area was hardly inhabited and no community made claims to the land. This might have been a result from historical inland migration caused by the threats of piracy. The interior is hence more heavily populated, and various communities here claim customary rights to the land, thus making the establishment of plantations more difficult and expensive. A second reason is logistical: the greater the distance to the market, the higher the costs production incurs.

Oil drills are found along Nunukan's coast. Although presently the second most important sector for the district's revenue, the small local reserves make it unlikely that the importance of the oil industry will ever surpass that of the agricultural sector.

## The hinterland

The hinterland's economic situation differs markedly from that of the coast. The majority of the population consists of subsistence farmers. As trading possibilities are largely lacking in the interior there is no stimulus to grow surplus for the market.



Harvesting Beras Krayan

An important exception is the economy of Krayan, which is traditionally orientated towards the communities on the other side of the central mountains, in Malaysia. A 1967 agreement between Indonesia and Malaysia allows for residents of the central mountains to cross the border at a checkpoint, which is greatly facilitated by a recently (2003) constructed road between Krayan's capital of Long Bawan and the Malaysian market town of Ba'Kelalan.<sup>45</sup>

The population of Krayan has a history of breeding buffaloes for export to Malaysia and Brunei that predates the division of central Borneo into different states (Ardhana et. al. 2004:14; Harrison, 1959:30). The road and the possibility of motorised transport provided a major stimulus to this trade. In addition to breeding buffaloes, the people in Krayan nowadays grow surplus rice and pineapples to be sold to traders in Ba'Kelalan. The income is then used to buy goods and foodstuffs in that town's shops.

<sup>45</sup> See Bala (2002:81-85) for a discussion of the border agreement.

Rice from Krayan (*beras Krayan*) has a very good reputation in Borneo. The rice has very fine grains and a delicate flavour, and is in great demand in both Malaysia and Brunei. Grown in permanent, wet rice fields, a field of a hectare is estimated to yield three to four thousand kilos of rice per year.<sup>46</sup> Around ten percent of this is needed to feed the farmer and his family, whilst the rest is sold (see also *Kompas*, 19 May 2003). It fetches a price of two to three times that of lowland rice, although the price tends to drop during the harvest season when many people want to sell. As a result, extensive barns are built in Krayan where those who can afford to wait store their harvest until prices rise again.

Eating Krayan rice is for the upper classes. Small quantities are exported by airplane to Nunukan to meet a growing demand of East Kalimantan's elite, and Brunei's sultan regularly sends for supplies. Indonesia's president occasionally orders it through the district head. With the rice's reputation spreading, Krayan's sub-district head is researching the market. To his delight, the Sultan of Brunei drew the attention of the Indonesian press in 2005 by sending a helicopter to stock up on rice. Through these reporters the sub-district head learned about the growing interest in organic products developing in Indonesia's urban elites. In Krayan, at an average altitude of 800 to 1,000 meters, pests are rare and the usage of pesticides, fertilizers or other chemicals unnecessary. In Jakarta and Bali, Krayan's rice has made headlines as a pure and organic product beloved by foreign aristocrats (see *Kompas*, 4 December 2006; *Radar Tarakan*, 29 August 2005). The national market, and hence Krayan's and Nunukan's economies, may find themselves in for a treat.

## The allure of the border zone

Tying into the aspirations for the establishment of the independent province of North Kalimantan, plans are being developed by the Nunukan district government and local politicians to turn the island of Nunukan into an industrial and recreational zone that caters for the nearby Malaysian city of Tawau as the islands of Riau do to Singapore. This would allow for the development of large sectors of trade, industry and services, and would overcome the district's dependence on agriculture and, possibly, make Nunukan a centre of international trade. Informal negotiations are being conducted with Malaysian parties, but as yet these plans remain for the future. Even though Nunukan's economy is growing steadily (8,59 percent in 2003, 4,51 percent in 2004)<sup>47</sup> such an economic spurt would need considerable financial and administrative support from the provincial government, which at the time appeared to take little interest in the economic development of the north, and ideally a special economic status granted by the national government.<sup>48</sup> This does not stop district planners from steadily moving along.

<sup>46</sup> Wet rice cultivation in Borneo is limited to the central mountains, yet a highly productive method with much larger yields than dry rice fields provide (see Schneeberger, 1979:49-53).

<sup>47</sup> The decrease in 2004 was due to fluctuations of agricultural prices (Badan Pusat Statistik Kabupaten Nunukan, 2004:239), showing the district's dependency on that market. The growth of 2003, although again less than in 2002, is also explained by fluctuations in the agrarian market prices (Badan Pusat Statistik Kabupaten Nunukan, 2003:266).

<sup>48</sup> Personal communication with representatives of Nunukan at the provincial parliament. Local politicians claimed that the provincial government preferred to invest in the more developed south, which made the

At present, Nunukan's national reputation is closely associated with the international region's opportunities, but not because of its economic success. The frequent ferries running between Nunukan and Malaysian Tawau have made Nunukan a transit point for passengers going both ways, among them large numbers of hopeful Indonesian workers leaving in search of work in Malaysia. Authorities in East Malaysia regularly round up Indonesian workers without valid working permits and deport these to Nunukan (Tirtosudarmo, 2005:172-180).

In 2002 Malaysia carried out a large operation against illegal workers and deported thousands of Indonesians from Sabah to Nunukan in a few days time (see *Kompas*, 20 August 2002). This wave of mostly pennyless people greatly overstretched the capacities of the district government, who were completely taken by surprise, to provide food and shelter. As the national government failed to provide adequate and substantive assistance in shelter, food, clothing and transport, at least 85 deportees died and outbreaks of various diseases in the emergency camps were hardly contained (see Tirtosudarmo, 2004).

#### 4.4.4 Forestry

Logging is still a considerable industry in Nunukan. In 2004 the official year production amounted to **635,899 cubic meters**.<sup>49</sup> At the doorstep of Malaysia's log industry and market, Nunukan does however have an extensive problem of illegal logging. The smuggling of wood from Indonesia to Malaysia is a well-known and well-described problem in Kalimantan's border areas (cf. Wadley, 2001: Obidzinsky et. al., 2006). In the years 2001 and 2002 an estimated two million cubic meters of logs were exported from East Kalimantan to Sabah, most of it illegally (see Smith et. al., 2003 and Tacconi et. al., 2004). Logging in Nunukan's northern border forest was greatly facilitated through the construction of a highway in Malaysian Sabah running parallel with the border for some 100 kilometres, from which dozens of small tracks branched off towards the East Kalimantan border (see *Kompas*, 30 August 1999). Along the Sarawak border as well, wood smuggling is a common problem (cf. *Kompas*, 16 June 2004), while overseas and river routes to Tawau probably carry the bulk of illegal logs (see *Jakarta Post*, 7 April 2004). In a recent article, local authorities confessed themselves to being practically powerless due to lack of personnel and equipment (*Tempo*, 21 September 2005).

According to Nunukan's chief of police, illegal logging was the most common crime in the district in 2007 and strong counter measures were direly needed (*Radar Tarakan*, 2 January 2008). In 2004, East Kalimantan governor Suwarna Abdul Fatah called for illegal loggers to be shot death, thus voicing the serious nature of the problem (*Kompas*, 2 August 2004). Shortly afterwards he himself illustrated the spread and penetration of this crime, when he was convicted for corruption because of his role in a scandal related to a planned one million hectare oil palm estate.

Research indicates that rather than by bands of log pirates roaming Northeast Kalimantan's forests, most illegal logging is carried out by official logging operations. These work beyond their concessions, or work the area on the pretext of carrying out other work (Barr, et. al., 2001:25-27; Obidzinsky et. al., 2006 and 2007:528-530). An example is the case in which former East Kalimantan governor Suwarna was convicted. Instead of laying out one million hectare of palm oil estate, the responsible companies cleared the forest and took off with the logs using illegally issued land-clearing permits (*Kompas*, 22 October; *Gatra*, 20 June 2006). Similar schemes have been carried out in Nunukan (Barr et. al., 2001:47-50; Obidzinsky et. al., 2006:13-14) where they gave rise to an ongoing popular distrust of companies and development schemes. Hidayat (2005:245-247) provides a powerful argument by showing that Nunukan exports extensive quantities of logs, but has virtually no income from logging. Where, he wonders, does the money go? The answer remains shady, but his research makes clear that it does not end up in the district government's treasury.

Nunukan's forests contain extensive areas with a protected status. Divided over several locations, the district has 167,428 hectares of protection forest (*hutan lindung*) as well as 356,819 hectares of national park, most of which are part of the large Kayan Mentarang national park that runs through several East Kalimantan districts along the border with Sarawak. Various wild animals live in the forests, including at least one herd of elephants that migrates between Nunukan and Malaysia, as was established by a team of international biologists in 2006 (cf. *Kompas*, 16 October 2006).

#### 4.5 Concluding remarks

In this chapter I discussed the geographical and political settings in which the research for this book was conducted. I have done so making a tripartite distinction, but must emphasize that this distinction is as much an analytical tool to me as it is to the officials in charge of the administration of Indonesia. Politics in Paser and Nunukan do not end at the districts' borders; they are part of developments that take place in wider regional, national and international contexts. Migrants arrive and depart while NGOs and *adat* organisations engage in networks and alliances that connect organisations throughout Borneo or indeed Indonesia. The regional government itself is a vivid example of an organisation that transcend regional boundaries in its operations since, if anything, its task is to combine national and local interests into policies that address the needs of both. As the following chapters illustrate, the discourses that are used to argue rights to land in Paser and Nunukan likewise combine local circumstances with broader regional, insular, national and even international issues. Paser and Nunukan are the regional settings in which the struggle for access to land becomes tangible. Yet that these districts are situated in, and inherent parts of, a larger and often more abstract setting, becomes clear through the discussion of the state of affairs at the level of the province. Paser and Nunukan are regional entities that exist largely because of the

investment's return and profit likely, rather than in time and capital consuming projects in the north.

49 By way of comparison, Paser produced 130,556 cubic meters in the same year.



administrative borders drawn up at the national level. Both are part of the province of East Kalimantan, but local workings might effectuate a division of that province in order to create a new province of North Kalimantan. What is more, even at the regional level the size of territories is not certain. Paser has lost land to the new district of Paser Utara Penajam, Nunukan to Tana Tidung. This willingness to split shows that the region is not necessarily a cohesive unit from a cultural or ethnic perspective. Yet regional territory is the amount of land and natural resources that regional governments control. A decrease of territory thus can be interpreted as a decrease of power of that specific regional government.

### Wealth and economy

The inclusion of data on local economies and the respective forestry sectors emphasizes an essential aspect of the capacity to regulate access to a territory: control over land and such natural resources as may be found on or in it, and over the manner of its usage. Extensive plantations –oil palm in both Paser and Nunukan, as well as rubber, cacao and pulpwood plantations throughout the districts– require large land surfaces. And whereas land used for plantations may often become available for other purposes at a later point in time, the devastating effects of open pit coal mining –taking place in Paser– virtually rule out usage of the land for agricultural purposes afterwards. Access to land thus implies the possibility to profit from its riches as well. As the economies of both Paser and Nunukan revolve around produce for which land is essential, control over land thus implies control over riches as well as livelihoods. Establishing and maintaining such control is worth the effort.

During the New Order, the regime's patrimonialist system kept a tight rein on access to these riches. The removal of that regime's leaders has however opened up the land to new competitors and brought the arena to the regional level. The respective forestry sectors are a strong example of this. Whereas extensive legislation exists to regulate and control logging, the price of logs is such that illegal logging is a highly tempting alternative. Such illegal logging is not, as the case of Nunukan illustrates, carried out by wild bands of 'logging pirates'. Those in power have influence in it and may well be able to monopolize this illegal sector for their own gain; very much like the previous New Order elite, but now decentralised to the regional level. However, Paser shows that alternatives might be possible as well. Becoming a conservation district could considerably benefit the regional treasury. If the district government is able to combat illegal logging and control any such attempts by its local elite, this would show that *reformasi* has not only effectuated a decentralisation of patrimonialism in the form of corrupt and illegal practices but resulted in increased local responsibility as well.

### Politics and identity

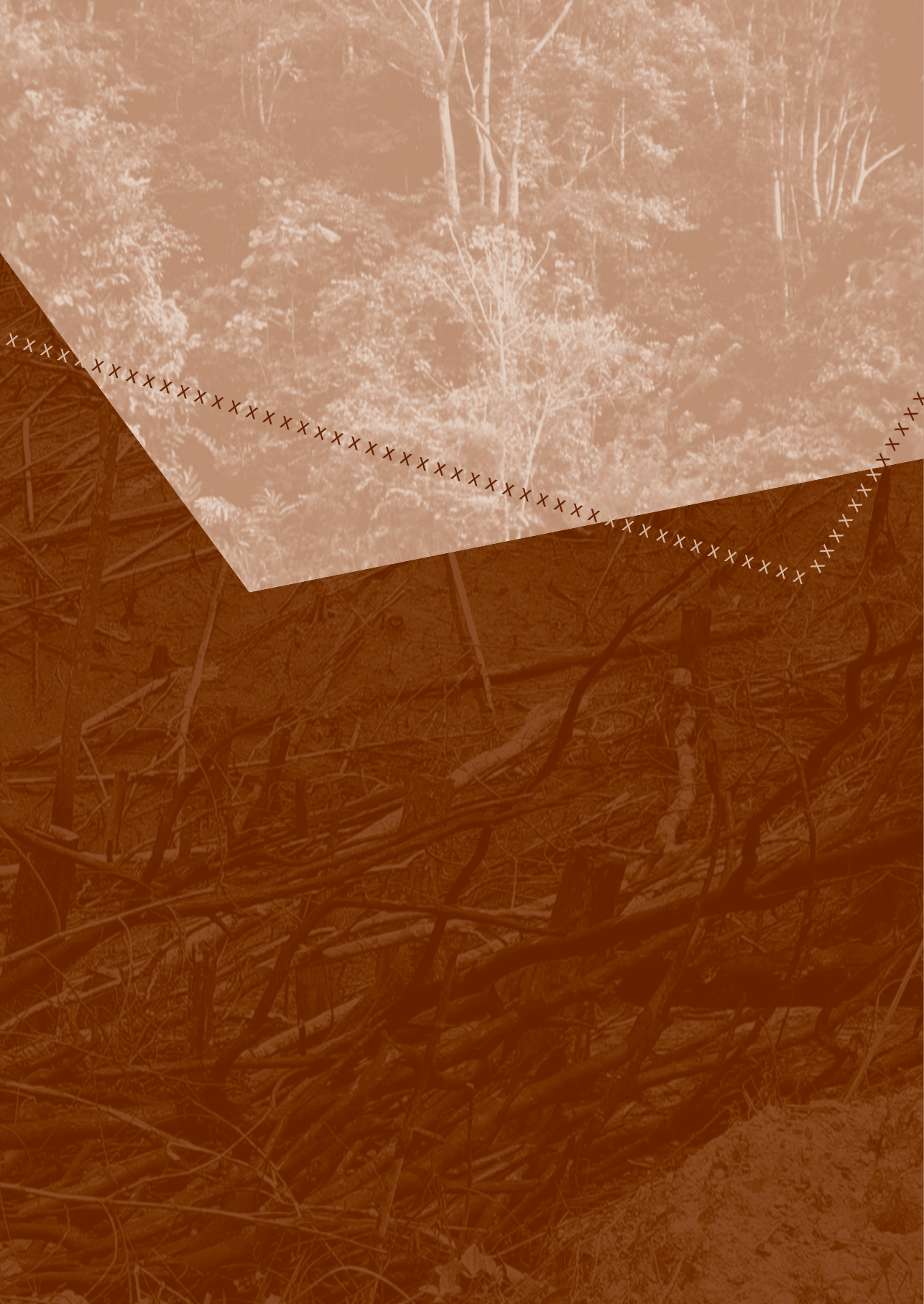
*Reformasi* has inspired initiatives intended to further local interests rather than those of the state in all three areas discussed in this chapter. These interests are not necessarily those of the population of the area as a whole but rather those

of specific groups. The potential of ethnic differentiation, overt competition over local resources and newly emerging power brokers create hitherto unseen social and political constellations that are as exciting and challenging to some as they are worrying and unpredictable to others.

It becomes clear that ethnicity and indigeneity are rallying points with both legal and economic potential in the province as well as in the districts. Yet as the pan-Dayak movement shows, indigenous identity has its limits as a uniting factor. It is effective as such at the regional level, when others to unite against are well-defined and immediately visible, but indigenous identity is a problematic call to arms at higher levels of abstraction. The near failure at the establishment of a new province of North Kalimantan due to population groups' objections to joining a new district named after the Tidung ethnic group illustrates this point. The absence of *adat* leaders in such larger debates –as opposed to *adat* organisations and their leaders– provides a further indication. With *adat* functioning as a local, social system optimal for relatively small communities, its validity is limited to relatively small territories.

However, recognition of land claims –*adat* or otherwise– clearly is a worthwhile goal in both Paser's and Nunukan's resource-rich settings. Multiple sources of authority exist in both districts. Government in the capitals, *adat* in the more remote mountains. Where these two engage, potent forces can come into existence or their chemistry can fail to take off. Nunukan's Lundayeh, with their officially recognized *hak ulayat*, are an example of a successful fusion whereas the absence of any official recognition of *adat* in Paser testifies of the opposite. Those stirring up and controlling this mixture hence may work magic for the district and their own influence in it, or they may be playing with fire.





# The mountains of Paser 5

## Land and authority in Gunung Lumut

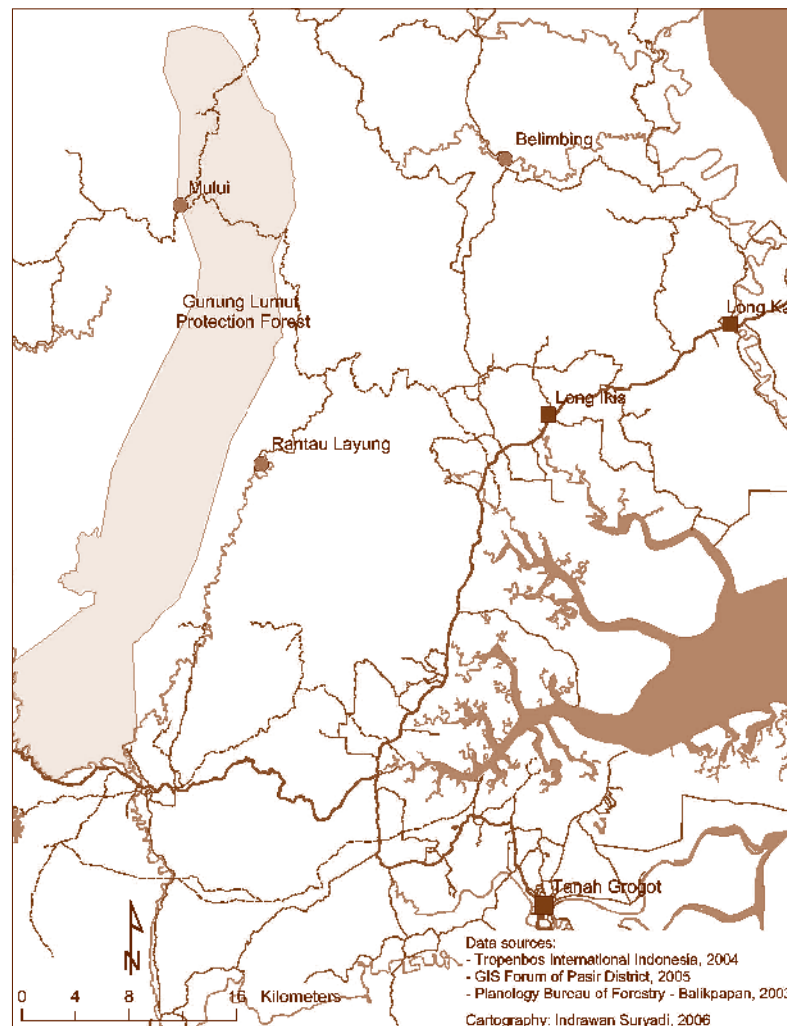
The steep hills of the Gunung Lumut mountain range form a dark line along the horizon of the vast oil palm plantations along the inter-provincial road connecting Balikpapan to Banjarmasin. From this central road it still takes some two hours to reach the mountain villages, four for some of the more remote settlements. One needs to travel along increasingly poor dirt roads, and ultimately along logging roads. When it has been raining and the roads are muddy ordinary cars are not up to the task: motorbikes, trucks or four-wheel drives are the preferred transport.

Yet few people want to enter the forested mountains. Although the area covers some 25% of Paser's territory, it houses only around 10% of Paser's population.<sup>1</sup> Very few migrants, so common in the coastal plain, settled here as employment opportunities are scarce. The terrain is not suitable for plantation cultures. The steep inclines and lack of good roads, combined with an indigenous Paserese population known for its fierceness and black magic skills, make the mountains an unpopular migration destination.

The various Paserese communities claim specified territories as their ancestral *adat* lands. These territories border one another, thus leaving no unclaimed land in between. Maintaining control over these lands and the forests that cover them is essential for local livelihoods. The land is used for swiddens, the forests provide fruits and game. Managing these commodities locally is one thing, dealing with the state and its land laws is quite another. The two require different approaches and refer to different normative frameworks. The communities are governed by both official (state recognised) village heads and *adat* leaders; many individuals feel that they have little need for more government involvement in the village. *Adat* is strong in the mountains and referred to in virtually all local affairs. Yet to maintain the borders of the *adat* lands the authority of *adat* leaders does not suffice. The district government, a serious power stronger than the communities, does not maintain similar notions regarding *adat*'s legitimacy and needs to be made aware and convinced of the validity of the *adat* territories. Village heads, the link between community and government, may have a role in this. Yet communities consist of individuals, and the potential for opposition to the authorities of government as well as to those of *adat* can be a source of internal strife as much as of concentrated effort. *Reformasi* emphasized the importance of rights through the economic opportunities it introduced. Balancing private and communal interest within the limits and opportunities that *adat* and government authority provide requires not blunt authoritarianism but micro-level statesmanship and a good sense for the best of both systems.

<sup>1</sup> Personal estimate based on data of the Paser District statistics agency.

In the past, the district administration was a real, yet remote, entity in these mountain communities. Here government power was mainly noticeable through the appearance of logging companies working with Jakarta-authorized permits that offered limited compensation for local claims of *adat* land rights most communities accepted the compensation and repossessed the land after the loggers moved on. As no repercussions or objections followed, the general feeling in Gunung Lumut nowadays is that the district government tacitly agrees to these *adat*-based land claims. The political climate since *reformasi* and the attitude of the government towards the mountain communities seem to support this notion. Nonetheless each community carefully monitors what goes on in its territory: not only the government might take land, encroaching neighbours can be a threat as well.



Villages in the Gunung Lumut area

In this context of dynamic social and power relations my concern in this chapter is with the way in which the members of the four mountain communities of Mului, Kepala Telake, Rantau Layung and Belimbing argue and maintain *adat*-based claims to land and forests vis-à-vis other parties. Remote from regional government in distance and trust, appealing to the relevant authorities as designated by official law is a rare course of action among these groups. Invoking state authority when this is seen as increasing strategic chances, however, is not. The authority of village heads and, on occasion, other government representatives can be appealed to in order to counter or weaken *adat* leader's decisions; a strategy that also works the other way around. My purpose in this chapter is to show the diversity, dynamism and the ingenuity with which authority is acquired and maintained, as well as exercised and thwarted. The usage of *adat* as a source of rights and of authority is the overarching theme. Communal interests are at the core of the deployment of *adat* identity, but individual interests within the community may warrant going against such strategies. Although ostensibly quite similar conditions apply, the four communities differ thoroughly in location, circumstances and social make-up. As a consequence, the interplay with outside powers and different representations of the self lead to notably different interpretations of 'community' and *adat* authority, and to different approaches to land and forest use.

## 5.1 Protecting Mului's forest

The village of Mului is located some three hours by car from the provincial road. It stands on a hilltop and consists of two rows of houses alongside a logging road that passes through the village. The village is named after the Mului River, which crosses some 8,600 hectares of *adat* land claimed by the community. The relative abundance of forest and unused land in the vicinity of Mului means that fields are almost never further than half an hour's walk from the village. Rice and vegetables are grown mainly for local consumption, but occasionally surplus is sold in the market towns if transport is available. For much of their history the Orang Mului<sup>2</sup> did not live in a village, but in individual houses spread across their territory.<sup>3</sup> Following the implementation of the 1979 Village Government Law the people of Mului were required to settle in a new village together with the people of the nearby Swan and Solutong rivers, who were traditionally subordinate to the heads of Mului.<sup>4</sup> The new village was named Swan Solutong and its administration consisted fully of Swan and Solutong people. Many Orang Mului refused and instead built their own village some two kilometres away. This settlement had no formal village status and was led by Mului's *adat* leader, Pak Lindung. In 1987 the uneasy relations led

<sup>2</sup> Literally 'Mului people' – the community sees itself as a sub-group (Orang Mului) of a sub-group (northern mountain Paserese) of Paserese. The actual number of Paserese sub-groups, which differ in dialect and *adat*, is unclear, but Yusuf's (2004: 3-4) estimate of twelve seems to be quite accurate.

<sup>3</sup> This rendition of Mului's history is based on local oral accounts of past events.

<sup>4</sup> Local tradition has it that the people of Mului arrived first in the area, and gave permission to the ancestors of the people of the Swan and Solutong rivers to settle in the area as well. This descentance of the area's first settlers gives the people of Mului a senior status according to *adat*.



to an open conflict, when the Orang Mului built a school in their own village. On the advice of the Swan Solutong village head, the government refused to provide a teacher and rebuked Pak Lindung for Mului's obstinacy. In reaction a large part of the Orang Mului led by Pak Lindung moved some ten kilometres upstream of the Mului river to an even more remote location.

In 1991 Swan Solutong was designated as a transmigration site and Javanese and Bugis migrants were brought in to populate the area. The district government asked the people from Swan Solutong and those from Mului to settle in the new Swan Solutong village, together with the migrants. Most people of Mului were still unwilling to give up the traditional hierarchy between the villages and declined, but the villagers of Swan Solutong, including some fifteen Mului families that had remained in the nearby Mului village, accepted. They were given the same assistance as the newly arrived migrants and received houses, seeds, utensils, clothing and money.

The Mului people living upriver decided that they also wanted to partake of this assistance and that they should not be isolated, but that they would not become subordinate to the Swan Solutong government either. This uncompromising attitude initially earned them a reputation among government officials for foolhardy stubbornness in clinging to a 'primitive' way of life doomed to disappear, but, gradually, more positive notions of continued traditions became part of the group's public image. In the late 1990s, with the onset of decentralisation in full swing, PADI, an indigenous peoples NGO from Balikpapan assisted the Orang Mului in writing a request to the provincial governor for aid. They requested assistance to resettle at a former log yard located within the boundaries of their *adat* territory along a nearby logging road. The Orang Mului argued that they were willing to move to the road and hence partake of modernity and Indonesian society but that they were unwilling to leave their *adat* lands, which their ancestors had ordered them to guard in perpetuity. This approach bypassed the Swan Solutong village and Paser district government. The governor agreed to the request and instructed the Tanah Grogot welfare department to set up and implement the project. By 2001, a new village of 52 simple wooden, uniform houses, a school and a mosque was built for the Mului river community, who by then consisted of some 130 persons.

The new location was no absolute success. It was directly at the road, but remote from water and most forest gardens, making it necessary for people to travel quite some way each day. Moreover, in 1983 the Minister of Forestry declared a sizeable part of Gunung Lumut to be a protected forest (*hutan lindung*). The district level forestry department had failed to inform other district departments of this change in status and the welfare department had neglected to inform the forestry department of the intended resettlement. As a result the new village of Mului turned out to be built within the borders of the protected forest.<sup>5</sup> This status severely restricts human interference in the area, and does not allow for habitation.<sup>6</sup> However, the forestry department only reported their objections three years after the settlement

<sup>5</sup> The protected forest was established by Ministry of Forestry Decree No 24/Kpts/Um/1983.

<sup>6</sup> Protected forests are supposed to function as 'green lungs' that convert carbon into oxygen. Only activities that are considered as not interfering with forest conditions are allowed, such as collection of non-timber forest products (but not hunting) or environmental tourism (see also Riyanto, 2006: 203-207).

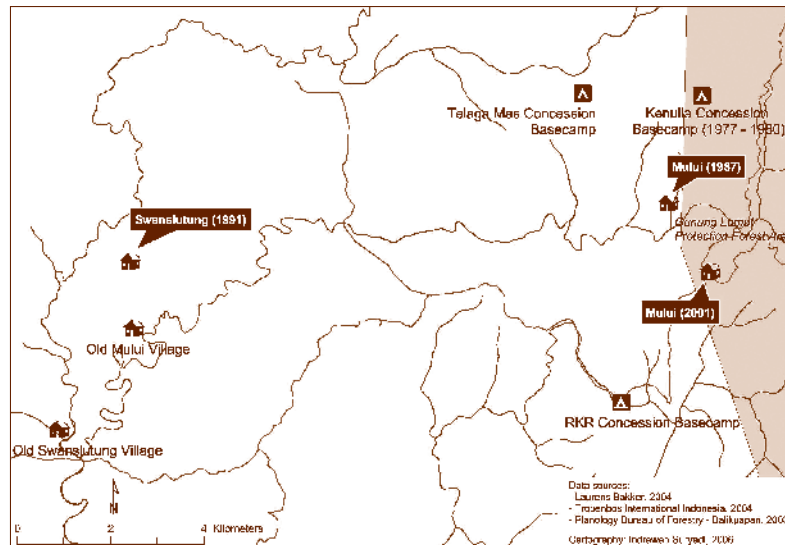


Mului village

was built and it lacked the means to take direct action to remove the newly settled Mului people. The village thus remains in a legally impossible location. The people of Mului, meanwhile, stress not only that the protected forest overlaps with their *adat* forest, but also the green approach their *adat* has towards the environment.

When, in the early years of decentralisation, disagreement between regional governments and the Ministry of Forestry on the validity of locally issued logging permits brought logging companies to negotiate directly with communities,

Mului caused a stir by turning all loggers down. I was given two different reasons for this. The first, from the people of Mului, was that the logging would go against their *adat* and, since they had a say in it now, they would do what they could to prevent it. The second reason, given in a neighbouring village, was that the forest of Mului had already been logged in the eighties and did not contain good wood. The neighbours believed that the people of Mului simply wanted too much money. Strategically speaking, however, the stance of the Orang Mului was a wise one. Essentially living in an illegal location, logging the protected forest would have added to the reputation of being self-interested malcontents that their earlier obstinacy had gained them. Refusing logging operations in the area because of their *adat*, on the other hand, associated them further with the indigenous peoples movement's interests.



Historical movement of Mului village

### A 'green' *adat* community?

Whereas many other villages allow small-scale logging in their *adat* forests, the people of Mului forbid it. To cut down a few trees for one's own immediate needs is permissible if the plan has been discussed and approved by the community, but no one may cut down trees for private financial gain. In this the status of wood differs from that of other forest products that can be gathered by anyone and sold off if the individual wants to do so. This prohibition on logging was established when the forests of neighbouring villages that did allow logging disappeared at an alarming rate.<sup>7</sup>

7 A vivid warning is a stretch of land belonging to Swan Solutong, lying between that village and Mului. It has been logged thoroughly in the past and became covered in *alang-alang* grass rather than recuperating forest. The land is quite infertile, and has been given out to migrants who planned to use it for oil palm after it

Financial enticements made many communities agree to the felling of large stretches of forest. A relative abundance of forest, vague boundaries and popular support meant that opponents could not easily counter these developments by drawing on *adat* regulations. In Mului the forest is the main provider of all requirements – food, building materials or products to sell when cash is required. Logging the forest would provide a lot of cash in a short time, but it would destroy future harvests for the current generations and for their children. The forest is, as the assistant *adat* leader called it, the community's 'insurance' for when disaster strikes and a direct supply of resources is needed.<sup>8</sup> Although the decision not to log leaves Mului less well-off financially than some of its neighbours, the steady flow of forest products and the self-supporting abilities of the community mean that the people have little urgent need for cash.

This stubborn refusal to move or to cooperate with outside investors attracted both government and NGO attention. In a recent film (*Balai Penelitian dan Pengembangan Kehutanan Kalimantan*, 2005) by the provincial forestry department, the department's commentator describes the people of Mului as *masyarakat adat* who had been living in the area for hundreds of years before it was designated as a protected forest,<sup>9</sup> and goes on to have Jidan, Mului's assistant *adat* leader, explain why it was really for the best of all that the people did not join the Swan Solutong resettlement. Jidan states:

*[They said] In the future, things might get difficult; many [people] will come. We said... I said – I alone answered at the time – we ask, I said, [to live] just at the TPK above.<sup>10</sup> Although the place is far from water, the environment there will still be guarded, we will guard it, I said. Ya, [it will] not [be] disturbed by outside activities. I mean company people, people who damage the protected forest. I said we, starting now, automatically guard this forest. If it is not guarded, we ourselves will guard it to help the government that guards it. If, I said, we were to go very far from Gunung Lumut, Gunung Lumut would not be safe.<sup>11</sup>*

was no longer possible to grow food crops on it. But as they lacked the financial means to invest in oil palms, some of the migrants have already left for other areas.

8 An assistant *adat* leader (*wakil kepala adat*) is not common in Gunung Lumut, and rare throughout Indonesia. A few reasons were given for one's existence in Mului. Initially I was told that the *adat* leader was an old man, Pak Lindung, who might not live much longer. Pak Lindung was, however, a strong, muscled and healthy man. Pak Lindung himself stated that as Mului's *adat* had become essential in defending the community's land to intrusions from outside, he simply needed the support of another expert as he could not be everywhere at the same time. A third reason, given by Pak Lindung's brother, was that Pak Lindung had received death threats from angered neighbors and illegal loggers on a few occasions. Being a fiery personality, Pak Lindung instantly countered these threats by stating that he would kill them first, but having an assistant *adat* leader spread the risk. Strictly speaking, Pak Lindung has the final say, but the assistant *adat* leader has all the authorities of a second-in-command.

9 'Masyarakat adat Mului sudah menetap di wilayah ini sejak beratus-ratus tahun yang lalu. Jauh sebelum kawasan ini ditetapkan menjadi hutan lindung.'

10 TPK- tempat penimbunan kayu, a log depot, referring to the log yard mentioned earlier, which is located along the top of a hill.

11 '[Bilang mereka] Kalau masa depan ini, mungkin tambah rumit, tambah banyak. Kami bilang...saya bilang -saya sendiri yang menjawab waktu itu- kami minta, saya bilang, di TPK di atas saja. Walaupun disitu jauh dari air, tapi lingkunan disini masih terjaga, kami bisa menjaga, saya bilang. Ya, tidak terganggu dengan kegiatan luar. Maksud saya orang-orang perusahaan, orang yang merusak hutan lindung. Saya bilang kami, mulai seka-



Another film made by PADI (2005) presents the same message in a much more direct way. The opening scene has Jidan sitting in the forest stating, “The forest is our right. In the Paserese language that means ‘*alas adalah milik kain*’”,<sup>12</sup> which is the title of the film. Further on we see a gathering of villagers and Pak Lindung states, to general consent, “thus we do not like it when [Gunung Lumut’s forest] is logged by companies or for illegal income”.<sup>13</sup> Pak Jompu, one of the village elders, adds that forest usage needs to be agreed to by the people of Mului in a public deliberation session. “If the forest is logged without proper and honest consultation, the forest will be destroyed,” he says. “We wouldn’t get anything. We will not get anything when our forest is controlled by other parties.”<sup>14</sup> Jidan is sitting in the background wearing an AMAN t-shirt.<sup>15</sup> Although the two movies largely show the same picture –an *adat* community guarding its forest– the message varies. In the first one, the Orang Mului help the government guard the protected forest of Gunung Lumut, in the second one emphasis is on their own rights and interests in that forest. Both get the point across that the Orang Mului treat the forest with care and distrust outside influences, but the different approaches of the makers make one wonder whether they would agree to the line of argument in the other’s film.

### Governing Mului

The village government of Swan Solutong, to which Mului belongs as a hamlet, has little influence in Mului. First because Pak Lindung, the *adat* leader and Jidan, the assistant *adat* leader are both influential and outspoken individuals living in Mului, whereas the official village head lives in Swan Solutong. Second because the population prefers to decide matters through communal discussion to following an individual head’s opinion, regardless of whether that head’s position is based upon governmental or *adat* authority.<sup>16</sup> Yet the Orang Mului realize that they cannot ignore the state and hence take its impact into careful consideration. For instance, the nearest government official is the village head of Swan Solutong. That village has about four times as many inhabitants as Mului, of which the majority are transmigrants with no understanding of local *adat*. For several years now, the village head of Swan Solutong has been a local Orang Paser. The current one being a stepson of Pak Lindung. Preferring to have one of their own as the local government

representative, the Orang Paser of Mului and Swan Solutong voted together *en masse* to elect a Paser candidate as village head, and so have managed to retain the strongest possible position for local *adat*.

Application of *adat* means that it must be continuously adapted, updated and redefined in consideration of recent developments. An example is the punishment that had to be established for selling logs from Mului’s forest. The usual way of punishing someone who sells communal property for private gain without the consent of the community is by fining him. A fine may consist of goods, foodstuffs, or, since the perpetrator is likely to have recently come into possession of a substantial amount of it, money. The two *adat* leaders, some elders and other villagers made up an *ad-hoc* council. Pak Jompu related how a nearby village had asked government assistance in solving a conflict they had with a logging company that worked in their *adat* forest without their consent. A government mediator arrived, and when it was established that the village had an *adat* fine of 1,000 rupiah for every tree that was felled, the loggers’ representative could hardly withhold his laughter and gladly promised that his company would pay the fine each time they transgressed the *adat*. The mediator helped the parties settle on a fee of 15,000 rupiah per cubic meter of wood that the loggers extracted from the forest.<sup>17</sup> Wishing to avoid such prejudicial precedent, the council in Mului decided to ensure that their ruling would be in line with present circumstances. Basing themselves on a historic case, the council decided that as two trees had been cut, the fine should be two times four *reals*. A *real* being thought of as an ancient coin, either of silver or gold. Nobody knew the present value of a *real*, but by referring to the scarcity of *reals* in the area it was quickly decided that a *real* would at least equal 1,000,000 modern Indonesian rupiah.<sup>18</sup> In their discussion the council emphasized that it was of vital importance to adapt historical fines to their present equivalents, as well as to the perpetrator’s identity and profits. Voices went up to establish a standard fine, but that idea was dropped when it was argued that there were too many potentially important details that would have to be left out. The fine should be higher than the money made by the perpetrator, but a logging company would comfortably pay a fine that a local villager would not be able to pay in a lifetime.

The composition and operation of the *adat* council is thus a relatively informal affair. The *adat* leader needs to be there to sum up the final conclusion but nobody else’s presence is essential, whereas everybody can join in. That does, however, not mean that all voices are equal. Charismatic and tenacious speakers as well as older people with a lot of experience are held in high regard. This goes for both men and women, although few women and younger people are inclined to engage in these long discussions. Young people and women often have daily chores to at-

rang, otomatis menjaga hutan ini. Kalau tidak dijaga kami sendiri yang menjaga membantu pemerintah yang menjaga. Nanti saya bilang kalau kami sangat jauh sekali dari luang Gunung Lumut ini ngak bakal selamat Gunung Lumut.’

12 Hutan itu adalah hak kami. Itu berarti di dalam Bahasa Paser ‘*alas adalah milik kain*’.

13 Itu maka kami tidak suka kalau ditebang perusahaan maupun pendapatan liar.

14 Kalau hutan ini digarap dan tidak melalui musyawarah yang baik dan jujur maka hutan akan hancur dan kami tidak akan mendapatkan apa-apa. Itu menurut pendapat kami. Kami tidak akan mendapat hasil apapun kalau hutan kami dipegang oleh pihak lain.

15 Yet the Orang Mului do not cooperate automatically with *adat* NGOs, as has become clear from their opposing the LAP over the ownership of an extensive amount of scrap metal (see Bakker, 2005).

16 The authority of an *adat* leader has always been limited. He has a great knowledge of local *adat*, its history and its various rules, but his authority is like that of the chairman of an assembly. Executive domination of state-instituted government structures, on the other hand, gave state-supported village heads much more individual authority until the Reform Era. See Warren (1993) for similar examples of local understandings of *adat* and state-based leadership in Bali.

17 Such mediation would never have taken place under the New Order. As loggers nowadays need to pay considerably to get police or army support, it is often more efficient for them to reach a deal with the local population. Government mediators are sometimes brought in to speed up the process and give the company official support. The expenses to obtain the assistance of a government official for one or two days are considerably less than bringing in a group of soldiers for a period of time.

18 The East Kalimantan historian Assegaff (1982: 149) writes that in the first half of the nineteenth century the sultan of Paser decided to coin his own money since the diverse kinds of foreign money in circulation were confusing and inefficient. The sultan’s coins were called *real* and made of silver. The value is unclear: a *real* equalled 2 *batu*, 4 *suku*, or 10 *tetep*, all silver coins; or 25 *uang*, 40 *gobang* or 100 *pilis*, which were copper coins.

tend to and simply do not have the time for day-long deliberations if not absolutely essential, whereas older men are often exempted from mundane tasks or delegate these to their wives or children.

### Land issues

The territory of Mului borders the territories of various other Paser villages (Pinang Jatus, Kepala Telake, Rantau Layung and Long Sayu). The local population has a clear notion of the borders of their *adat* territories, but these differ from the village borders registered by the local government. This rarely leads to problems as the villages refer to *adat* borders rather than to official ones, but the different stances with regard to logging are a potential source of conflict. The protected forest area, for instance, is a governmental construction that overlaps with the *adat* land of various villages. The borders of the protected forest have been marked out by the regional Department of Forestry with white poles following the confusion over Mului's relocation, but these poles are not controlled. Not all villages whose *adat* forests are (partly) protected consent to their protected statuses and at various locations logs are taken from *adat* territories in such forests.



Pak Lindung

In August 2004, loggers from Rantau Layung were working only a few kilometres away from the border between the two *adat* territories. As the village of Mului is situated very near to the border of its territory, they were in fact working close to Mului itself. This worried Pak Lindung, since loggers have a reputation for 'looking at good trees so much they overlook the borders'. He sent word to the loggers that he wanted them to show him exactly where they were working and they sent a truck to Mului to pick him up and show him the site. It was agreed by both parties that the logging was taking place in the *adat* forest of Rantau Layung, but Pak Lindung reminded the loggers to stay away from Mului's forest and retreat to two kilometres behind the border. After some negotiation the loggers agreed not to come closer to the border than one and a half kilometres.

A few days later a car stopped in Mului, from which alighted a delegation from the neighbouring village of Long Sayu, consisting of several prominent villagers and the *adat* leader. Between Mului and Long Sayu lies a forest that belongs to Long Sayu, but as the people of Long Sayu originate from Mului, the people from Mului have a right to gather forest products there. The people from Long Sayu had decided to open this forest to logging, but were required by *adat* to inform the people from Mului and, for the sake of good relations, ask their consent. Like Swan Selutong, Long Sayu had been subordinate to Mului in the past, yet Mului and Long Sayu had maintained close relationships throughout the years. The main dilemma the people of Long Sayu faced was not whether they would be allowed to carry out the logging or not (they had decided themselves that they would), and whereas they did not have that authority according to *adat*, national decentralisation legislation invested the village level of government with the authority to take such decisions.<sup>19</sup> They counted upon the Orang Mului to be unwilling to risk a deterioration of

<sup>19</sup> Their main dilemma that day was to decide whether it would be more profitable to allow a large logging company to extract the wood in exchange for fees or to use small-scale loggers who might pay a better price but were not as reliable.

relations between the two villages, but came in numbers and were prepared for a stiff round of discussion to be sure.



Jidan (on the stool, far right) and two of his brothers

The people from Mului listened and politely argued against the entire idea of logging, but, as this did not change their visitors' minds. Pak Lindung spoke the concluding words that he did not agree with Long Sayu's plans and would be much happier if they forgot about it, but that if they wanted to go ahead he would not stop them. This caused an uproar among some of the younger men. Jehan, a younger brother of Jidan, angrily raised his voice to argue that Pak Lindung was wrong to consent and that logging in that forest posed a further threat to the forest of Mului and its products, as the gardens and fruit trees in Long Sayu would doubtless be destroyed. Who, he asked, would the people from Long Sayu turn to for wood, rattan and fruit once their own were gone? To Mului, he was sure, as the communities were related. A heated discussion raged for about an hour, with the younger men unwilling to agree with Pak Lindung and Jidan. Then Pak Jompu, attracted by the noise, entered the house. A very senior, rather deaf (he only noticed the going-on when the debate got heated) elder in Mului, he listened to the arguments and voiced his opinion that the logging could not be stopped, but that the people from Long Sayu had to be very precise with regard to the border, and that the Orang Mului would keep a close eye on it. Jehan angrily left the room, but returned later to sit sulking by the wall. Neither he nor his friends voiced any other objections and the two groups parted on good terms. For Jehan and his friends, going against the venerable elder Pak Jompu was almost inconceivable. Going against Pak Lindung was possible through Jidan, the assistant *adat* leader and Jehan's own brother. To a brother he could be quite direct and critical but less so to Pak Lindung, who was his uncle and the father of his wife. Jidan's family relations thus made him a convenient intermediary. Pak Jompu, however, was beyond reproach. A more remote senior relative to Jidan, Jehan and Pak Lindung, Pak Jompu could not be

criticized through an intermediary. Doing so directly would have been very impolite, especially in front of the people from Long Sayu, and Jehan was unwilling to go that far.<sup>20</sup>

Pak Lindung had a stroke in the summer of 2005, and lost a lot of his joy in life. When I returned in the summer of 2006 he had passed away. Jidan proudly told me that he was now the *adat* leader of Mului. This was disputed, although not to his face, by other, older, members of the community who were supported by, amongst others, Jidan's brother Jehan. However, to the outside world Mului presented a united front and continued the course of identifying themselves as a *masyarakat adat* community guarding the forest. Pragmatically speaking, they carry out the policy of forestry protection that covers most of their territory. Although they manifest a keen independence, it is fully in line with forestry politics. This position ensures that they do not attract negative government attention, and discourages government interference in local matters. It is difficult to say whether the same line of action would have been followed if the forest did not have the reinforcement of protected status under state law. The protection this status offers makes it worthwhile for the Orang Mului to invest in the maintenance and future of 'their' forest rather than cash in while they have the chance. On the other hand, the option of the latter action is virtually closed to them since logging, especially in a forest that is protected even by state regulation, would substantially weaken their 'green' conservationist image.

## 5.2 Kepala Telake's riches

Some 27 kilometres to the north of Mului lies the village of Kepala Telake that was introduced in chapter one. The villages are separated by a number of steep mountains, thick forests and rivers. No road connects the two: travellers wanting to go from Mului to Kepala Telake may choose to walk for two days or go by car, descending first from Mului to the inter-provincial road, from where another logging road runs to Kepala Telake. That logging road, by 2005 an overgrown dirt track, ends as the village's main street. Before my first visit I had expected Kepala Telake to be something like Mului, but even more remote and, based on local stories, even more traditional. Thus I was very surprised when we turned the last bend of the road early in the evening and found that the village had electric lighting and many of the houses had two floors and glass windows. Although by far the remotest village in the Gunung Lumut area, Kepala Telake is one of its most prosperous villages as well. A conscious and selective usage of the opportunities that presented themselves upon decentralisation allowed the population to make the most of their *adat* territory and forest.

<sup>20</sup> Similar disagreements occur often, and it is important to recognise that heads in most *adat* contexts are not vested with unqualified authority. In the case of the remnant logging equipment left on Mului *adat* territory discussed in chapter four, Pak Lindung and Jidan had agreed after contentious negotiations to allow the scrap metal to be sold through the *adat* NGO. But upon return to the village from that meeting, the *adat* leaders were met by outraged villagers who forced the NGO representative to tear the agreement up.

At the end of the twentieth century, Kepala Telake was a tiny village of fifteen families. Most young people moved away to the towns and villages at the foot of the mountains since Kepala Telake had no school and was isolated for most of the year. The village could only be reached from outside in the rainy season, when the water in the river was high, and the boat trip took three days. In 2000, a logging company received a permit from the district government to work in the area and constructed the road that ends in the village. The road shortened the trip to the plain to a mere three hours, and brought news of the changes in Indonesia's politics and the new administrative reforms. In the spirit of reform the villagers dismissed their unpopular village head, who had been appointed rather than elected and had made himself highly unpopular through corrupt practices and general untrustworthiness. From their midst they elected a new village head, a trader named Pak Abbas, who regularly travelled to the villages of the plain.

### An economic revival

From 2001 onwards, Kepala Telake's economy developed spectacularly. The community claims some 56,200 hectares of land as its *adat* territory. Most of it is forest, but the territory contains some deep limestone caves where birds' (*burung walet*) nests, which are in great demand by the Asian market, are collected.<sup>21</sup> Pak Abbas used to buy these nests from his fellow villagers and sell them on in the plain. When he became village head, he brought efficiency in the trade that considerably benefitted the community. The trade in swifts' nests is not, however, without danger. The caves are located half a day on foot from the village and gangs of armed robbers have attacked collectors on several occasions in the past, once even killing a villager. Pak Abbas organised the construction of a sturdy, seven-meter high guard tower in front of the main cave. It overlooks the approach and the entrances to the other caves. This tower is continuously garrisoned by around ten villagers armed with spears and machetes, and equipped with jerry cans of gasoline and battery acid to make impromptu bombs. Pak Abbas pays all guards a daily fee equivalent to a day's pay in the plantations of the plain as part of his trading operation. Those fit and brave enough to scale the cave walls to collect the nests come to the cave one time a month. The harvest is divided among climbers and helpers (who often include guards) and sold to Pak Abbas for prices between one and two million rupiah per kilo.<sup>22</sup> The men of the village take turns working at the caves. All have their fields to tend to and most have families, which can make it difficult to be away for weeks at a time.

Pak Abbas clearly has a double role here. As a village head he has to protect the interests of the community, whereas as a private trader he has his own profit to consider. As yet Pak Abbas appears to balance the two quite well. Satisfying him-



Tower guarding Kepala Telake's limestone caves

<sup>21</sup> These nests are made by the White-nest Swiftlet (*Aerodramus Fuciphagus*) and the Black-nest Swiftlet (*Aerodramus Maximus*).

<sup>22</sup> One kilo may contain as many as one hundred nests. A Chinese restaurant in Balikpapan sells swallows' nests soup containing one nest per portion for 250,000 rupiah per bowl. By the time the nests reach Balikpapan they have passed hands at least three times. Most nests are exported.



self with a lower profit than coastal traders make, the still large income made from swifts' nests allowed him to become the richest man of the village and gain the praise and support of the village population. In 2001, Pak Abbas requested the district authorities to formally recognise the exclusive *adat* right of the Kepala Telake community to collect swifts nests in the caves. The officials then asked him to bring along Kepala Telake's *adat* leader to explain the validity of this *adat* right to them. This posed a problem. Kepala Telake's *adat* leader had died some years before and his traditional successor, his son, had moved to the plain and had no interest in the position. The community hence elected a new *adat* leader; a young man who had recently returned after years of working in the plain following news of the village's economic development. He knew very little of Kepala Telake's *adat*, but a group of elders took it upon themselves to act as his advisors and teachers. The *adat* leader managed to convince the government officials of the contemporary strength of *adat* in Kepala Telake, and of the validity of the claim to the caves. The community received a monopoly on the exploitation of the caves on the condition that the government would receive a revenue tax of 25 percent. This settlement has been very beneficial to Kepala Telake, as some form of recognition is now in place and the government's endorsement deters robbers at least as much as the guards in their fortress do.

By 2004, Kepala Telake's blossoming economy had inspired a considerable number of young people to return and the village had grown to 66 households. Many among this younger generation had lived and got married in villages on the plain, and a number of them brought non-Paser spouses and friends to the village. Several skilled artisans were attracted by Kepala Telake's wealth and requested permission to settle in the village. All three of Kepala Telake's carpenters, for instance, are Javanese and continuously engaged in the construction of new houses. A number of sturdy Bugis are included among the caves' watchmen.

Like in Mului, the community's remote location makes visits by government officials extremely rare, which essentially leaves the community to arrange matters as it pleases. Yet in Kepala Telake it is the official village head, rather than the *adat* leader, who has the primary headship role in the community. He does so, however, in close deliberation with the community and long consultation sessions are held before decisions are taken. The new *adat* leader has the task of mediating local conflicts and chairing meetings in which requests to open up fields in the territory are discussed by the community. The relative abundance of *adat* land usually makes these requests unproblematic affairs, but the requests of immigrants especially are thoroughly considered as their unfamiliarity with the area's agricultural history may unwittingly have them request usage rights to land that is already part of another person's plot.

### The merits of logging

Logging in Kepala Telake differs radically from the situation in Mului. Whereas all of Mului's territory was logged earlier, including large stretches of the area that would later become protected forest, logging in Kepala Telake only started in 2000. In 2002, Pak Abbas and the village council issued a village regulation in which it was

decreed that every logging operation working in Kepala Telake's *adat* territory had to pay a fee per cubic metre to the community.<sup>23</sup> The height of the fee was to be determined in mutual deliberation. In 2004, the logging company that constructed the road to the village had its district level permit revoked by the central government; on the grounds that they had entered Gunung Lumut's protected forest. An accusation that is still being disputed by the company with Kepala Telake's support. The central government had issued two new permits to the area in 2002, a decision in which the community of Kepala Telake was not involved nor consulted. One was issued to a company already operating to the north of Kepala Telake's territory in the neighbouring district of Kutai Kartanegara, and one to the company that worked in and around Gunung Lumut in the 1980s. The company to the north will operate in a remote part of Kepala Telake's territory with fee rates yet to be determined. However, having agreed to acknowledge Kepala Telake's *adat*-based authority over the area, villagers do not regard it as a threat to their fields and gardens. The other company has received restricted permission by the community to work around the village. The *adat* leader negotiated with them and they agreed that the loggers would only work in the regenerated area they had already logged two decades earlier. In exchange, their fee was set at a meagre 20,000 rupiah per cubic meter.<sup>24</sup>



Logging in Kepala Telake

People from Kepala Telake run two logging operations themselves, and both operations pay a fee of 50,000 rupiah per cubic metre to the community. They both work with village permits, and have access to the large old growth trees and

<sup>23</sup> Kepala Telake Village Regulation number 1 of 2002. As far as I am aware this is the only regulation ever formally drawn up by the village council. The bureaucratic procedure and the amount of work involved in passing one make *adat*-based deliberation far more efficient. As this regulation concerned outsiders, it was based upon the village administration's formal authority rather than *adat* claims, which are more open to contestation.

<sup>24</sup> The fee for the company in the north had not yet been determined, but was expected to be considerably higher.



expensive woods from which the outside government-licensed companies are excluded. They jokingly refer to themselves as ‘illegal loggers,’ since the Forestry Department would label them just that; but in the opinion of the community these people have more rights to log the local forests than any company with government permits. Both operations are relatively small, each harvesting some ten cubic meters of ironwood per month. Buyers from the plain, who come up by truck to the village, buy the wood for 500,000 rupiah per cubic meter. Each operation provides work to five or six young men in the village and suffices to keep the village’s three small sawmills in operation.<sup>25</sup>

The issue of sustainability does not play a direct role in Kepala Telake decision-making. Indirectly it comes to the fore in that people wish to have their rattan gardens, fruit trees, and other possessions in the forest preserved. The local loggers, especially, are hampered by this, as they are expected to respect all these properties in their operations and pay indemnifications if they damage anything.

The money that Kepala Telake’s treasury receives from the various logging operations is used for community projects. All houses in the village are connected to a communal generator that provides the village with electricity in the evenings. The gasoline required, a fee for the machine’s operator, and the wages of the two teachers working at the village school make up the community’s invariable monthly expenses.<sup>26</sup> Surplus money is used for one-off projects. During my stay in the village, a pipeline network delivering water to all the houses of the village was in the final stages of construction. Essentially a simple affair of plastic pipes leading from a man-made pond above the village to all the houses, this project is nonetheless a striking example of community initiative.

At the same time the village’s streets were paved with stones brought up from a nearby river. Whereas such work could have been carried out as compulsory community service (*gotong royong*), the size of the project and the intensity of the work made it unlikely for the project to succeed if all labour had to be provided on a voluntary basis. Workers were thus paid a fee from the village treasury, and many continued the work for one or two weeks. Nowadays the overgrown logging track leading to Kepala Telake turns into a stone-paved road just before entering the village. It passes a large number of new as well as older houses in various stages of extension, some saw mills, a few shops, and then comes to a brand new school building and village head office.

Towards the outside world the image of a remote, traditional community is carefully maintained. Not only does this help Pak Abbas in securing district government aid money for the development of the village, it also supports the community’s extensive claim of *adat* territory. For instance, when negotiations were initiated with the logging company that will enter the territory from the north, the people from Kepala Telake took the opportunity to clearly establish the boundary with the

community living in that area. The two groups erected a wooden effigy of a protective spirit at a central point on the border to commemorate their agreement, and held a ritual feast as prescribed by local *adat*.

### Drawbacks of the *adat* label

Although *adat* has an important role in the daily life of Kepala Telake, most people are reluctant to refer to themselves as *masyarakat adat*, and hold reservations against joining the *masyarakat adat* movement.<sup>27</sup> Together the village secretary and the *adat* leader explained that the present usage of the forest and the swift cages would be difficult to sustain if Kepala Telake had to comply with the image of *masyarakat adat* popularised by AMAN and other NGOs. The presence of logging companies could be ascribed to the dominance of the state, but the local logging operations and the legal efficiency with which Kepala Telake had monopolized the exploitation of the swifts’ caves, they felt, went against the strict ideas on nature conservation promulgated by *adat* NGOs. Moreover, they were quite content to cooperate with the district government and felt uneasy about the protesting and positioning they would be associated with if they were to join the *masyarakat adat* movement. They felt that the community had decided for itself how it used its *adat* and *adat* resources, and that joining the *masyarakat adat* movement would hamper the community’s development. Moreover, Kepala Telake’s economic situation attracts immigrants who are willing to adhere to local *adat*, but would feel excluded and put off if the community redefined itself as *masyarakat adat*.

At present, adherence to *adat* means asking the *adat* leader permission to open up fields in the territory and respect his answer. The *adat* leader, being asked such permission by everyone, practically functions as a local land agency and knows the locations of everyone’s fields, gardens and former fields. Land that has been used in the past and has become overgrown again may still be subject to a customary claim. Migrants do not know this and think of it as free land, whereas the *adat* leader knows differently. *Adat* permission thus gives migrants local legitimization of their land usage. Not being full members of the *adat* community, migrants’ claims would lose their certainty if that community decided to start courting *masyarakat adat* identity, under which the migrants risk exclusion and inherent loss of rights. Such full dependency would certainly discourage new migrants from joining the village and strengthening the local economy.

The Kepala Telake community feels that their *adat* rights to land are secure, but especially the younger generation feels the need of keeping up good relations with the district government in order to sustain them. As many of them have lived outside of the mountains, they have realised that their *adat*-based resource access is a privilege that survives due to its remoteness from the plantations of the plain. Although the people of Kepala Telake are happy to be ‘among themselves’ again, many people aim to obtain a similar standard of living to that they know from the

<sup>25</sup> The money made inspired yet another villager to buy a small truck and start a daily shuttle service to the lowland markets. A few fishermen, an intrepid greengrocer and a small number of mobile snack sellers drive up to the village on motorbike from the plain a few times a week to sell their goods along the road. Often they start in Kepala Telake, where people pay the highest prices.

<sup>26</sup> These amount to 1.4 million rupiah.

<sup>27</sup> I need to point out, however, that the term was not known to about 20 percent of my respondents. Many of the village heads, among them the *adat* leader, and younger people did not see themselves as *masyarakat adat*. Some of the older villagers, notably three out of the seven that assist the *adat* leader, on the other hand felt sympathy for the concept and would support a *masyarakat adat* movement in Kepala Telake.

plain. Led by the village head, the village secretary and the *adat* leader, Kepala Telake thus seeks to maintain the privileges of an *adat* community in having the sole right to exploit the natural resources of their *adat* territory and combine this with the benefits of developing large-scale, market-oriented natural resources projects within their territory.

When I last visited in 2005, a plan had been launched by villagers to convert part of the forest into a palm oil plantation that would operate similarly to the birds' nest caves and the sawmills. Although received enthusiastically, the plan was not carried out due to a lack of funds, the poor state of the road, and the remoteness of a production plant that would make transport too expensive. In the summer of 2006, I met the village head again at a district government office. He enthusiastically told me that the plan might be carried out after all. Together with the heads of other villages along the road to Kepala Telake, he had been lobbying for road improvements with the district government, which would greatly increase their possibilities for development. In the fall, the district head visited all these villages to see their conditions with his own eyes. His visit coincided with the announcement by the district government of a plan to revitalise Paser's agricultural sector with 20,000 hectares of oil palm and 10,000 hectares of rubber. The villagers jumped at the opportunity and requested the district head to award them the rubber concession, which had logistic advantages over oil palm. As far as I am aware, the rubber concession has not yet been allocated, but government assistance would greatly improve the possibilities of Kepala Telake to develop a large plantation. The potentially problematic issue for Kepala Telake's *adat* territory would be avoided by locating the entire plantation on recently logged land that falls within the official village boundaries.

### 5.3 Whose forest is Rantau Layung's?

One night, during my first visit to Rantau Layung in November 2004, I was talking to Pak Semok, Rantau Layung's *adat* leader. Pak Semok is a small and wiry old man. He is somewhere in his late 60s, or so he believes, but is physically very fit and still working in his rice field and forest gardens. As the evening progressed the *umum*, or common hall against which Pak Semok's own house was built and where I slept, filled up with villagers coming over to chat and see what we were doing. Pak Semok had been explaining some of the details of Rantau Layung's *adat* to me, illustrating this with accounts of past events. Aware that quite a large audience was listening to his tales, he asked me whether I knew why Rantau Layung had *adat* land. I thought about hazarding a guess, but realised that although the question was directed at me it was intended for everyone present. Hence I answered that no, I did not know, but I was certainly interested to find out if he could tell me. Pak Semok asked his wife for some more tea and told us:

*In the past, when there still was a sultan, the sultan had a slave from Rantau Layung. One day the sultan had an appetite for meat and he or-*

*dered the slave to go hunting. It did not matter what kind of animal would be brought back; deer, porcupine, or even pig. The slave took his spear and hunting dog and set out. Yet after trekking for seven days he still had not encountered any game. However, he had arrived at Rantau Layung, his village, and there he saw a pig immersed in a muddy pool. He ran towards it and speared the pig. The slave could not manage to heave the pig from the pool, and while attempting to cut it into more manageable parts, he discovered some unknown, hard, yellow stones in the pig's intestines. As it proved impossible to move the pig, the slave decided to take this yellow material instead. Upon returning to the palace the sultan inquired whether the slave had managed to secure meat. The slave related how he had not, but that he had brought the sultan some unknown yellow stones. Upon seeing these, the sultan knew they were gold. The slave had brought enough to fill a large plate. The sultan, grateful for the slave's loyalty, gave the slave a substantial share of the gold and granted him his freedom. The slave put his gold in a large bottle and decided to return to Rantau Layung. Once back he started to build up a new existence in the village and he became aware that his gold had little usage there. The villagers did not know what to do with it, and nobody wanted to buy it or receive it in payment. Thus the freed slave decided to return his gold to the muddy pool outside the village. He threw the bottle of gold into the middle of the pool, where it immediately sank below the surface. Since his descendants have come to know the value of gold, people have long and often sought for the bottle, but it has not been recovered as no one knows the exact location of the pool, which has long since dried up. Yet by throwing the bottle of gold into the pool, the ex-slave marked the pool and surrounding lands as the property of his village. The pool may have disappeared and its location has been forgotten, but the borders of the land are still well-known. Hence, the people of Rantau Layung today still exactly know the borders of the land that their ancestor claimed for the community.*

After Pak Semok finished he looked at me expectantly, as did all others present who had listened to the story as well. The tale contained substantial symbolism and I was keen to go into some of its details, but realising that doing so would be a quick way to have Pak Semok lose his audience I asked him instead what the story meant. "It means," he answered,

*"that our ancestors have taken the land as theirs without anyone disputing it. The ruling sultan was very grateful to the person from Rantau Layung and made him rich. How could he or any other authority not agree with the land claim made in Rantau Layung? However, the sultanate and Rantau Layung were different places. The sultan ruled and lived in Tanah Grogot while Rantau Layung followed its own adat as people work in the forest and in their fields. The sultan could use the gold the slave brought him to buy what he needed, but the people of Rantau Layung did not know it. They did not buy things. They traded with outsiders, and helped each other.*

*The slave was rich in Tanah Grogot but had nothing in Rantau Layung, yet he returned and the people gave him what he needed. They did not want his gold, they had no use for it. When the slave came to recognise this he even threw the gold away."*

Even though Pak Semok spoke quite loudly and passionately to the audience at large, he had clearly lost the attention of a number of people who got up and went out. Pak Semok ignored them, and changed the subject to the possible locations of the former pool. We talked some more about land, hidden treasures worldwide and the culinary qualities of various wild animals, after which we both called it a night.

I did not pay much attention to people leaving during Pak Semok's explanation of the story until a few nights later. Since that first evening the common hall had been a lot quieter in the evenings. This surprised me as our presence usually brought out a crowd of visitors. Pak Semok did not remark on this and remained as hospitable and talkative as ever, yet I wanted to know where the other villagers were. Walking around in the evening we found them in the house of the village head, a young man in his twenties. They were doing much the same as they had been doing in the common hall: smoking, chatting, drinking coffee and tea, so why had they moved? Asking brought me evasive answers along the lines of "yes, we moved here," or just slightly embarrassed laughter. A bit later that evening I was standing outside the house with one of the men and, using this privacy, asked him again. After looking at me thoughtfully, he told me that the *adat* leader's politics did not go down well with a part of the population. The *adat* leader was felt to be claiming an authority that he did not have, did they not have an elected village head? Clearly the village council and village head were responsible for governing the village under Indonesian law, and nobody else. The village head and Pak Semok held opposite views when it came to logging in Rantau Layung's forests, and as both had their supporters this led to tensions in the village. There was no open conflict, but the logging openly carried out by the village head and his friends annoyed others considerably.

Pak Semok was one of the few openly criticising the loggers, which earned him the animosity of a fair number of enterprising young men. However, his status as a senior member of Rantau Layung's community and moreover its *adat* leader gave him considerable standing that made it difficult for these youngsters, including the village head, to talk back to him. Usually they avoided Pak Semok, but us taking up residence with him had brought a number of them out to visit. Pak Semok's explanation, after telling the story of Rantau Layung's *adat* land, had given them the feeling that he was accusing them of not maintaining the unity of the community and its values, but instead to be searching for the equivalent of the gold that the slave had pointedly thrown away. Having heard this story before and not agreeing with the accusations, the young men had decided to leave. "Whose *adat* forest is it?" the man outside the village head's house asked me, "his or ours? He is the *adat* leader, but he is old. We can make good money by doing some logging in the forest. Why would we not do so if there is such an abundance of trees?"

## A divided community

Some twenty kilometres before Mului, the logging road that winds up from the plain reaches a fork. Straight ahead leads to Mului and thereafter Swan Solutong, to the left a branch continues some twelve kilometres until reaching Rantau Layung. The village has existed in the area for a considerable period of time (villagers claim



Pak Semok (Photo: J. van den Ploeg)

over 100 years). Some of the older people were born near the village's present location and remember its tumultuous recent history. During the 1957 uprising in South Kalimantan the villagers retreated to the forest for over six months as rebels and the Indonesian army fought it out. The army wanted to avoid further uprisings and keep the area's population under strict control. Thus the people from Rantau Layung were told to resettle in a more accessible village in the mountains' foothills.

After negotiations with the army command, the villagers were allowed to return to the area in 1981, on the condition that they concentrated their houses into one village. Nowadays the village of Rantau Layung has some 215 inhabitants divided between 52 households. Like in Mului and Kepala Telake, the villagers are largely self-sufficient farmers who lay out dry rice fields and gardens and collect forest produce to meet their needs. Rantau Layung has an abundance of forest, some 18,000 hectares, part of which falls under the protected forest. Like in Mului, the villagers were not informed of the establishment of the protected forest. They found out through a logging company who worked in their area. As the loggers could not tell them what the legal status of protected forest actually meant, the people from Rantau Layung continued to treat the area as their *adat* forest and actually run small logging operations there. The risk of getting caught is negligible. Paser's forestry service in Tanah Grogot is understaffed and short on funds. It has two simple cars with which to patrol the district, but Rantau Layung's remote location and the difficult roads make patrols to the area extremely rare. Rantau Layung has developed a strong symbiosis with logging. Notably since decentralization, various groups of loggers have started to work in its forests. Initially the village head gave out permits, but the continuous changes in legislation made it highly unclear to him what his authorities in that field were.

In 2001 the village head went to the forestry service and the National Land Agency's local office in Tanah Grogot, but did not receive an answer. Since he had to deal with decisions and permits that the forestry service gave out to Rantau Layung's area without informing him, he decided that he would not have to inform them of his decisions. This led to some substantial changes in the approach to logging. Before, the *adat* leader and other members of the population were consulted before permission was granted, but now the village head monopolized the power to take this decision. Meanwhile he started a logging operation himself and employed a number of young men. Some of his friends followed his example, and Rantau Layung soon had its own groups of loggers. In theory, loggers pay a percentage to the village. This money is supposed to end up in the village's treasury and be used for projects of communal interest. By 2004, however, the village's income from logging had dwindled to a slow trickle even though the number of loggers had increased. The village treasurer, another function of the village head, did not have a plausible explanation and part of the population, among them the *adat* leader, took a more critical stance towards his credibility. Open accusations of embezzlement were not in order as the village head had a considerable number of supporters, so Pak Semok instead proposed to have the money paid for local logging concessions flow into a newly established *adat* treasury. Much to the chagrin of the village head, Pak Semok's proposal was accepted by the community. The funds were used to build the common hall.

Over the years Pak Semok's outlook on logging has become more critical. He knows Pak Lindung and Jidan from Mului well, and has enthusiastically embraced NGO support of *adat* rights. A strong example of this is the support he generated in Rantau Layung for a community mapping project facilitated by the *adat* NGO PADI, who also worked in Mului, in 2000. With assistance from a specialised Javanese

NGO, a map was created of Rantau Layung's *adat* territory. The ensuing map depicts Rantau Layung's territory as much larger than the village borders demarcated on the map used by Paser's authorities and has it, contrary to the official map, linking seamlessly to the *adat* territories of neighbouring communities. The territory is divided into a variety of categories:

- *Tana alas*: forested land, a source of non-timber forest products including forest gardens.
- *Tana awa umo*: swiddens or fallows, cleared land where rice is grown.
- *Tana strat*: land removed from agricultural or natural processes. The village site, other buildings, the logging road and main footpaths.
- *Tana lou lati*: sites of former houses.
- *Tana lati and tana lati piara*: land covered by young secondary forest where no cultivation takes place. A rather large stretch of Rantau Layung's *adat* territory.
- *Tana mori*: primary forest which can only be entered to perform certain rituals. It cannot be used for logging or cultivation.
- *Tana lowong*: present and former burial sides.
- *Tana eking*: borderlands under inter-village management.

PADI assisted in the creation of such maps in a number of villages around Gunung Lumut, but their funding was insufficient to generate maps for all. The usage of Rantau Layung's map is however highly illustrative of its administrative value. Once the specialists had finished gathering field data, they left Gunung Lumut to produce a professional map. A set of these was sent to Rantau Layung a few weeks later. They measure roughly a square metre and show the various areas in bright colours. At the bottom the map has a number of squares where dignitaries can place their autographs to show their agreement with the map. The squares foresee the consent of the village and *adat* leaders of neighbouring villages, as well as of the sub-district head, the sub-district chief of police, district level police and military, the district head and the heads of various district-level government services. The map was taken on a tour of neighbouring villages where most of the village and *adat* leaders were willing to sign, even the sub-district head signed in his allocated square. Nonetheless, police, army and district level officials were, and still are, conspicuously absent. Pak Semok told me that he certainly intended to take the map to Tanah Grogot to get it signed by all, but that he lacked the time. It seems unlikely, however, that district officials will be willing to show their agreement in writing to a non-formal map. Being refused a signature by an official could well damage Pak Semok's standing vis-à-vis Rantau Layung's village head, whereas the initial signatures and a verbal declaration of intention to collect the rest in the near future lent at least some authority to the map.

## A showdown

The village head fully agreed to the map of *adat* lands, until Pak Semok showed him in public that their *tana mori* was located completely in the protected forest, where the village head was logging. Thus implying that the logging was illegal according to both normative systems applied in Rantau Layung. Around the same



time two other humiliating events occurred to the village head. First, he had bought a car without learning how to drive. The logging roads of Gunung Lumut are not a good place to learn this, so the car sustained damage each time the village head drove down to the markets of the plain. One evening when he was expected back he did not return at all, and we were informed the next morning that he had driven his car into a shallow ravine, where it lay upturned. Miraculously the village head and his passengers had sustained no injuries, but while they were spending the night in a nearby relative's house all provisions that had been left stacked in the car were stolen.

Pak Semok did not hesitate to denounce the village head's reckless behaviour and the damage it had brought his fellow villagers who had accompanied him. He questioned, in public, but not to the village head's face, the latter's ability to meet the requirements of such an important official position. This was notwithstanding the village head's democratic election. Although Pak Semok's critiques ensured him of the support of part of the population, they antagonised others. In the summer of 2005, things were heading for a confrontation. The villages of Mului and Rantau Layung had been selected as the locations of two base camps for an international team of scientists that would carry out an assessment of Gunung Lumut's biodiversity. Shortly before the first group arrived to start building the camp in Rantau Layung, the issue of the poor condition of the road was raised in the village. Villagers suggested that improvements needed to be made and wanted to know from the village head how much money the village treasury, where all logging still fees went at the time, contained. It proved to be nearly empty, although it should have contained various millions of rupiah. The villagers did not openly confront the village head with this discrepancy, but people started to move out of the village. Many had small hamlets at their rice fields where they lived during planting and harvesting times, and these were being expanded into proper houses. A few went as far as installing hundreds of metres of electricity cables to connect these buildings to the communal power generator located in the village's centre.

A few weeks before the biodiversity assessment was to take place, Rantau Layung was surprised by the sudden arrival of a convoy of cars bringing police officers, *adat* NGO representatives and forestry officials from Tanah Grogot. Members of the *adat* NGO, called PEMA,<sup>28</sup> frequently visited the villages of Gunung Lumut and were aware of the illegal logging going on around Rantau Layung. They had frequently reported it to the forestry service but it had not led to any action. Now, shortly before the assessment, the plan was formed by the forestry service to conduct an inspection of the area using the vehicles already in use for transporting materials and equipment to the base camps. Right along the road, close to Rantau Layung, the village head was working with a number of other men at a new logging site. They were completely surprised by the arrival of the officials and although they all ran away into the forest their identity was established quickly enough. The police seized chainsaws, machetes and axes and removed the starting motor of a truck that was being loaded to transport logs to the plain, when they

found the keys to be missing.<sup>29</sup> Now that his activities were openly and officially marked as illegal- they attracted reactions from beyond the borders of the community. Among the people preparing the base camps were a fair number of students from Samarinda's Mulawarman University, who had made a name for themselves with fiery anti-corruption protests during the fall of Suharto. These students assisted the villagers in forming an anti-corruption committee that relieved the village head and the village secretary from their posts.

The forestry officials and PeMa's personnel erected signs along the logging road. All had the heading "forestry service of the district of Paser in cooperation with PeMa". followed by various texts:

"You are in the Gunung Lumut protected forest zone. This area is being protected."

"It is forbidden to log in the Gunung Lumut protected forest zone. This area is being protected."

"Guard the continuity of the Gunung Lumut protected forest zone in the interest of our grandchildren."

The lower parts of the signs discreetly showed the names of the project's financiers: half a dozen local logging companies. Further along the road the people of Mului assisted the officials and PeMa, but Rantau Layung's villagers stood back and watched. Even Pak Semok was nowhere to be seen.

## The aftermath

In October 2005 I returned to Rantau Layung. A new village head and village secretary had been elected. I was talking to Pak Semok when a young woman entered. Pak Semok instructed her to go to her house and prepare some tea for us. As we walked through the village I noticed that the people who had moved out to their field houses in opposition to the former village head's policies, had returned to the village. We also met the former village head, who told me that he now ran a gold panning operation. The government had shut down the logging, he told me, but offered nothing to replace it. If the gold panning would prove unsuccessful they might have to return to logging, he told me while looking at Pak Semok from the corner of his eye. Pak Semok chose to ignore this remark and we walked on. I asked him whether he was not worried that the new village head would be enticed into continuing the logging if no other economic possibilities existed for the village. Before he answered, we had reached the house of the young woman who would make us tea. We entered the house and Pak Semok introduced her as his niece, who had been a teacher in Tanah Grogot but had recently returned to Rantau Layung. She also was, he added, the new village head. I had no more questions

<sup>28</sup> *Persatuan Masyarakat Adat Paser*; Union of Paserese masyarakat adat.

<sup>29</sup> They left a note in the starting engine's place, stating that whoever owned the truck could get his engine back at the district forestry service in Tanah Grogot. The engine was not claimed.

regarding the potential for new rifts between Rantau Layung's *adat* leader and village government authorities.

## 5.4 Maintaining control in Belimbing

Belimbing is a village in the foothills of Gunung Lumut. It is located about one hour by car along the logging road that ends in Kepala Telake. Belimbing is built around a bridge in the road that spans the lower reaches of the Telake river, and has a few shops and little restaurants offering refreshments to passing travellers. The road up to the bridge is of a better quality than that further along into the mountains. As it branches off from the inter-provincial road, it has houses on both sides for the first two or three kilometres and is asphalted. Gradually, the houses grow sparser and the oil palm plantations that provide work to the houses' inhabitants become more visible. The quality of the road's asphalt decreases as the distance to the inter-provincial road increases. Pot holes and broken layers of thin asphalt show the impact of the heavy trucks that transport logs and oil palm fruits along the road while tropical rain torrents have eroded the existing holes and contributed to a strongly uneven road surface.

Belimbing is divided into a Paserese part along the river and the bridge and a migrant part a few kilometres before the bridge, a little inland from the road. The Paserese of the area used to live a few kilometres higher up in the mountains but moved down upon government invitation in the 1970s when a prolonged drought and a mysterious vegetable disease destroyed their banana gardens. Settling along the river, individual families received subsidies to construct new houses. The first few years were difficult, but once the palm oil companies arrived, employment opportunities abounded. Many oil palm plantations were developed on the *adat* land of the people of Belimbing and other nearby villages, but as, they brought work and the companies provided some financial compensation, the people from Belimbing did not complain. Belimbing did not lose much *adat* land to the plantations. Most of its land lies upwards from the river, and the plantations never crossed to the other shore. The forests on that side were however being logged at the time, requiring the people of Belimbing to open gardens and rice fields along the river as soon as possible.

### Paserese and migrants

The Paserese community of Belimbing had existed in the margins of life on the plain for most of its history, but had always been much more involved with it than the communities of Mului, Kepala Telake or Rantau Layung. When I visited for the first time I stayed in the house of Pak Ramblansyah, or Pak Ram, the village head. A man in his early 40s, who moved down from the mountains with his parents as a teenager.

When the Paserese of Belimbing settled in the foothills along the plain, they wanted to be part of its economically profitable life. They intended to add impor-

tance to their village by increasing the number of inhabitants through welcoming migrant settlement. As an unintended result, Belimbing does not exist as a centralised village but is divided into three hamlets. Acting upon an invitation of the community, the district government in 1997 built the hamlets of Maro Simpa and Kondis on the land of Belimbing. The new parts were located at some distance from the original Paserese settlement of Lumbang in order to allow for the necessary vegetable gardens and rice fields, and together consisted of some 60 houses. The Orang Paser welcomed the migrants, but Pak Ram felt that they were troublesome as well. Migrants, he felt, went around as if they owned the place, which they did not. The main division in the village's population is between Paserese and immigrants. At present the village's land covers some 12,300 hectares, which more or less correspond to the territory that the Orang Paser of Belimbing claim as their *adat* territory. There are 596 people divided over 125 families living in the village, 80 families of which are Orang Paser.



Pak Ramblansyah (far right) and his family

According to Pak Ram, the land in the area belonged to the local Orang Paser, and if migrants wanted to use some of it they should discuss it with Belimbing's *adat* leader. The fact that the district level National Land Agency office has provided all migrants with a certificate of ownership for two hectares of land in Belimbing does not alter this: migrants are new arrivals who wish to live on, and use, Belimbing's *adat* land. When the houses in Maro Simpa and Kondis became occupied, it appeared that many migrants were not comfortable with adapting to Paserese life. Pak Ram sums up how the district government provided a free house, food, tools and some money during the first eight months, and plots of land for the migrants to cultivate. Yet very soon he had the first groups of dissatisfied migrants on his doorstep – the houses were deemed to be of inadequate quality and the plots of land were found to have poor soil, whereas the soils a bit further on were much better.

That last point was true; the area where Maro Simpa and Kondis were built was not used by the people of Lumbang because better quality land was available nearby.

But what can migrants expect? They are newcomers to the area and the Orang Paser of Kondis have been living there for generations. They cannot expect Orang Paser to abandon their fields because migrants want to use the land. Immigrants complaining about their houses or the erratic deliveries of assistance goods came to Pak Ram expecting him to solve matters, but he mainly passed them on to the authorities at the district level. This rarely helped to alleviate complaints. The situation was not helped by the administrative problems migrants caused Pak Ram. As the village head, he was responsible for issuing them with formal documents, but police and government officials had given him formal instructions regarding which papers the new arrivals should provide him with. Very often required papers were lacking and needed to be provided first. Pak Ram was more than willing to assist, but to get a birth certificate sent to Belimbing from some small village in Java or Sumatra costs time. He has been accused of stalling and it has been hinted that he would want a bribe, but never to his face. Pak Ram states that he did not invent the rules but people have to abide by them, whether they like them or not.

### Settlers and adat

Maro Simpa and Kondis have a high turnover of inhabitants. After the eight months of government assistance ended, various migrants enlisted for new migration sites and sold off their houses in Belimbing. This shocked people in mainly Paserese Lumbang: they had given up land in order to become a larger community and felt that rather than adapting to the situation, these migrants had profited unfairly from their and the government's kindness. The sale of houses also deepened the gap between the Orang Paser and migrants regarding landownership. The buyers, who had paid for, rather than received, the house and the land, were more decided in their ownership rights. However, the buyers were mostly people from the nearby market towns of Long Ikis and Long Kali: either Orang Paser or migrants who had been living in Paser for a long time. A number of these did not buy the houses as permanent residences either. Lacking land to grow foodstuffs near the town and favouring the cheaper prices in more remote Belimbing, they come over for one or two days a week to tend their fields, but otherwise have little attachment to village life. Others, notably Orang Paser from nearby villages, took up permanent residency. Their reasons for moving included the closer proximity of Maro Simpa and Kondis to their own fields, and the cheap price for which they could get good-quality houses. As one of them explained, buying a house this way was cheaper than building a new one in his own village.<sup>30</sup>

Although a percentage of these newcomers are thus Orang Paser, this does not mean that they necessarily agree to following the *adat* of Belimbing. As with migrants from other parts of Indonesia, adhering to Belimbing's *adat* might limit

their own rights and access to land in the area. Belimbing's original Orang Paser inhabitants are divided over the role of *adat* as well: it does not have the strong community support that it has, for instance, in Mului. Pak Ram believes that the people should follow national land law as it gives all villagers equal positions, and that usage of local *adat* should not exceed the authorities that national land law allows for it. He is not alone in this. A fair number among the Orang Paser population in Lumbang feel that there is no point for them in positioning *adat* squarely against the interests of the plantations or the government-supported immigrants. Rather, they feel, *adat* claims to land can be used as supporting arguments to furthering community initiatives with the government. As Pak Ram and two like-minded villagers pointed out to me, Belimbing is too far involved in the interests of Paser's society to start attempts at closing its *adat* land to non-Orang Paser. All Indonesians should be able to live anywhere in the country, and that includes Belimbing. *Masyarakat adat* NGOs such as PeMa and PADI have little influence in the village, both because the village is multi-ethnic and because not even all its Paserese inhabitants agree to *adat* rights as distinguishing them from other villagers. That does not mean that *adat* is to be ignored, but it cannot be the prime governing system in the village. This stance has gained Pak Ram the support of some migrants, and the animosity of some of Lumbang's Orang Paser. Belimbing is thus not only divided into three settlements, its population as well is far from united. This is illustrated by an incident that occurred when the district head visited Belimbing in 2005. A number of villagers accosted a senior staff member during lunch with the request to inform the district head of their desire to separate from Belimbing and become a village in their own right. They accused the village head of failing to represent their interests, never visiting their area and spending all government money that was sent to develop Belimbing on Lumbang and the area along the bridge. The event gained publicity when East Kalimantan's leading newspaper published an article on the district head's visit to the area, including a section on the villagers' request (see *Kaltim Post*, 2005). One would expect this request to come from a group of dissatisfied inhabitants of Maro Simpa and Kondis, but in fact the group mainly comprised Orang Paser of a remote part of Lumbang who did not agree with the village head's approach.<sup>31</sup>

### Authority in Belimbing

Pak Ram had a way of working that on occasion collided with the Paserese population. An example is a 2002 reforestation project that the district government carried out in the foothills of Gunung Lumut that stretch away behind Lumbang. Some 500 hectares of the forest that had been logged were to be turned into viable forest again. The ground needed to be prepared for this, and the regional office of the Department of Forestry hired villagers to do the work. They did it on

30 Most of the Orang Paser villages between Belimbing and the inter-provincial road are surrounded by oil palm plantations and have very little, or even no, forest left. This means that wood, the main building material, is a scarce resource that needs to be bought from others rather than obtained from the *adat* forest. Building a house thus becomes costly, and a finished house for a cheap price might be a better option.

31 Their criticism of the way development money was spent may be explained as follows: between 2002 and 2005 Belimbing received money to build a new school, a new clinic and twenty new resettlement houses. The school and clinic were located centrally, close to the bridge in Lumbang. The resettlement houses could be used for migrants or Orang Paser. The village head and village council preferred to have more Orang Paser in Belimbing and decided to have the houses build near the bridge as well, close to Belimbing's main cluster of Orang Paser.

an *ad hoc* basis and hence ended up with a work force largely consisting of people from Lumbang, thus mainly Orang Paser. The forestry officials did not check on the way in which the work was carried out and this worried Pak Ram, who checked on his own account and found that the clearing had been done somewhat poorly. As he wanted the reforestation to succeed, he informed the government service who then came down to check and, surveying the results, refused to pay the workers but instead hired migrants from Maro Simpa and Kondis to do the work again, but this time thoroughly. Pak Ram, held responsible by the Orang Paser for this turn of affairs, was not in favour in Lumbang for some time. Yet he felt that the reforestation was important for the village, and once the land had been replanted with young fruit trees and iron wood shoots public opinion of his actions softened again somewhat. Unfortunately, prolonged droughts in 2004 and 2005 seemed to be getting the better of the young trees, but this at least, Pak Ram felt, could not be blamed on the villagers.

Like other villages around Gunung Lumut, Belimbing has an *adat* leader. During my first visit in November 2004, the *adat* leader had just passed away. This had given rise to a temporary vacuum as a new *adat* leader had to be elected, but this could not be done so soon after the death of the previous one. Some time needed to elapse in which the authority of the deceased *adat* leader could decrease and be replaced by that of his successor. A month after his death the deceased *adat* leader was thus still the *adat* leader. In practice, his place had been taken over by Pak Lajam, an old man who is the father of Pak Ram and for the time being is the acting *adat* leader of Belimbing. The term used for Pak Lajam's function was the same as that for Jidan in Mului, assistant *adat* leader (*wakil kepala adat*).

Pak Lajam told me how, before, the *adat* leader used to be known as *tuo kampung*, or village chief, but that the appointment of a village head had given rise to the division between village head and *adat* leader. The village head had taken over a lot of the administrative powers of the *adat* leader, but the *adat* leader still held considerable responsibilities with regard to land. Anybody wanting to lay out a new field has to ask permission from the *adat* leader. In practice, however, this works much like the *adat* leader in Kepala Telake. It is not so much the *adat* leader's task to grant permission, but to check the location against existing and past land usage and thus avoid potential conflicting claims. Pak Lajam has little problem in dealing with the Orang Paser of Blimbing – most of them are as knowledgeable on the history of land use in the village as he is himself. It is more difficult to deal with the migrants. Like Orang Paser, they are expected to inform the *adat* leader with regard to any land usage plans they may have, yet not all migrants do so. It regularly occurs that migrants have absolute faith in the authority of the certificates issued by the national land agency, even though these have been drawn up by civil servants in remote Tanah Grogot, who based themselves on maps rather than on any knowledge of actual circumstances in the area.

Various Orang Paser own fruit trees or small garden plots in the area assigned to migrants and these, Belimbing's Orang Paser feel, need to be bought from their owners. It has happened on various occasions, though, that migrants refused to do this, basing themselves on their land certificates. Such actions caused ill-feel-

ing, but were eventually resolved in one way or the other. Things are more serious when migrants decide to leave Belimbing again and sell off the land they had received rather than return it to the community. Such sales were never foreseen by the people of Belimbing when they agreed to have migrants living on their land, and risk not only a decrease in the quantity of land over which the Orang Paser can exert influence, but also threaten to permanently alienate such land from their possession. At present, the Orang Paser of Belimbing have no need to worry. But in the nearby village of Muara Tiwe, the land available for traditional agricultural practices has become scarce due to such practices. Clearly the amount of land needed for the swidden agriculture practised by Orang Paser is larger than the intensive usage that Javanese migrants are notably able to make of their land. The usage of fertilizer is a relatively new phenomenon in Paser's agricultural communities, and few are inclined to spend money on it if new land can be made available for free.

In villages such as Belimbing and Muara Tiwe, the intense meeting between *adat* and official land law has given rise to people attempting to formalise claims to *adat* land. To do this, they need letters from the *adat* and village heads confirming this right. Pak Lajam is willing to assist in these claims, provided they are correct. If he knows nothing of the claim or is certain that other people have *adat* claims on the land in question, he refuses to give out a letter. Pak Ram largely follows the judgement of Pak Lajam, but not always. He has been to the district office of the national land agency and has a rough idea of the kind of documents the officials there require. Hence he asks the claimants to draw up a map of the land that is comprehensible when put next to an official map, after which the claimant, his neighbours, the *adat* leader and Pak Ram all sign the map. In this way the claimant cannot change the claim or switch the map before going to the national land agency, and this prevents conflicts that have occurred in the past. Yet Pak Ram is more critical of the idea of *adat* land than the *adat* leader and the majority of the Paserese population. He feels that a small community of people cannot claim an extensive area for itself when land is obviously needed by others as well. Thus, if someone comes to him claiming *adat* land while he doubts the claim, he will not cooperate. Likewise he does not support the idea of formal recognition of communal *adat* land (*tanah ulayat*) in Belimbing. Land that is not claimed by Orang Paser villagers as individual *adat* land is thus state land in Pak Ram's opinion, in accordance with national land law. However, this does not mean that the land is beyond the control of the community, Pak Ram feels. For years the village government had very little to say in the application of its lands, but *reformasi* has increased the possibilities. Pak Ram has attempted to combine feelings of communal *adat* land, the need for stronger solidarity in Belimbing, and Paser's district government interest in economically sound village level development plans and has come up with the idea of a 600-hectare oil palm plantation run and owned by the population of Belimbing. The idea suits developments in the villages along the oil palm plantations. Many individuals, seeing the profits that can be made from growing oil palm, plant a number of palms and sell the fruits off to the plantations' palm oil factories. The main problem they encounter is the difficulty of transporting the heavy fruit to the



factory, so truck-owning middlemen have come into use and buy up all the fruits available in a village. Alternatively, a village may hire a truck to transport its fruits to the factories, but both courses of action emphasize communal action in order to reap a profit. Pak Ram’s plan was a step further along that line.

The village council reacted enthusiastically to the idea, and while a delegation of the village went to discuss matters with the board of a nearby oil palm factory, Pak Ram went to Tanah Grogot to try to gain financial support from the district government, since the capital required for the initial purchase of young oil palms was considerable. Unfortunately his plan was cut short there, as the government had just issued a moratorium on new oil palm plantations. The plantations, the government claimed, drained the district of water, which was greatly required to meet the immediate agricultural needs of the population. In Gunung Lumut and its foothills the problem was not so immediate, but the green girdle of oil palm that lay between the mountains and the plain absorbed much of the water that the rivers brought down. In the winter of 2005, however, Pak Ram’s continued lobbying had brought some success. The district government had agreed to allow for and assist a 100-hectare oil palm plantation in Belimbing. It was not to be communal, however, but should exist of two-hectare plots for twenty families. Initially only families living along the road would be eligible as to allow for easy transport of the fruits, but later on the project would be expanded with another 60 hectares, which could include families living a bit further away as well. The limited number of participants as well as the fact that mainly Orang Paser live along the road did not go down well with the migrant part of the population. Nonetheless, the village council decide to continue with the project and aim for further expansion in the future.

The diverse orientations and aspirations of Belimbing’s inhabitants make its governance a sensitive and difficult issue in which *adat* has a marginal yet guiding role. It remains to be seen, however, whether this will remain the case in years to come. Unlike in the other three villages discussed above, Belimbing’s population is subject to a steady flow of people coming and going, a process in which the village’s population has little say. This is not in the least because the population has few unifying qualities. The Orang Paser are a significant group, but are divided amongst themselves. This is likewise for the migrants, and as long as there is no reason for the villagers to present themselves as a unity to outside inducements, there appears to be little chance of such unity being forged in any other way. The village head is a symbol of Belimbing’s situation: on the one hand maintaining references to *adat* and the unity of the community, on the other acting in favour of the idea of Belimbing being part of the larger nation.

### 5.5 Concluding remarks

The situations in the four mountain communities discussed in this chapter illustrate that maintaining access and control over the *adat* territories and such resources as these contain is done through a variety of interrelated yet not necessarily connected approaches. Each community as such strives to maintain control over its land,

but its individual situation makes that its approach differs from that of its neighbours. All communities attempt to optimize those local circumstances deemed most effective, hence all formulate different strategies to sustain their objectives. The individuals within these communities, however, are not necessarily united in their notions of how to manage the land and resources. Beyond a common objective of safeguarding the *adat* territories from outside intervention all communities contain internal divisions on these matters that compete to have their outlook made communal practice, in collaboration with outside forces if necessary. The power and governing relations within the four communities can be schematically represented as:

	Mului	Kepala Telake	Rantau Layung	Blimbing
Main local authority	Adat leader	Village head	Adat leader	Village head
Main source of rights invoked	<i>adat</i>	<i>adat</i>	<i>adat</i>	<i>adat</i>
Main opponents to present local authority	Locals disputing current application of <i>adat</i>	none	Locals disputing authority of <i>adat</i> leader	Migrants disputing <i>adat</i> rights
Role of official law	Minimal, and passive	Optimized to local needs by village head	Minimal, but optimized to local needs by <i>adat</i> leader	Optimized to local needs by village head
Relations with <i>adat</i> NGOs	strong	none	limited	none
Relations with district government	Very limited	strong	limited	strong

If we apply Bailey’s formula for strategy determination discussed in chapter one to this situation, it becomes clear that although the goal is the same in each community -maintaining control over *adat* territory- the resources and constraints vary. I will consider these differences from two essential perspectives: that of the legal framework and that of power relations.

### The opportunities of law

The continued existence of *adat* territories is governed by the dichotomous pair of official law and *adat* rules. As discussed in chapter three, official law has little certainty for *adat* land rights. It should come as no surprise, then, that none of the communities here sustains its claim of *adat* land with specific references to official law. That does not mean that official law is not applied in the discourse: it most certainly is, but in a sparse and pragmatic way so as to provide support to the claims yet keeping the chance of bringing in a normative trojan horse to the barest minimum. Take, for instance, Mului: here people go to great length to show the equation between their *adat* and the official protected status of the forest area they live in. This association helps them to defend their *adat* claim, although it severely limits their usage potential of the area as well. It is conservation, or nothing.

Strictly speaking they could not even live in an area with conservation status, but that aspect is wisely left out.

Likewise, the official bird nests' monopoly of the village head of Kepala Telake is not based on any law as such, but its existence works wonders for the recognition of Kepala Telake's *adat* claim to the caves where those nests are found. In Rantau Layung, the ending of the logging operation that was opposed by the *adat* leader by official authorities and *adat* activists brought in outside officials on the side of *adat*. This could have worked against the *adat* leader as he could have been suspected of betraying his own people, but as no proof of this was found the accusation was not openly made. The most intricate and furthest evolved mixture takes place in Belimbing. Here the village head and a large part of the population favour official land law, but demand respect for *adat* rights at the same time. *Adat* only favours part of the population and as such is a source of tension within Belimbing as a whole.

Doing away with *adat* would mean that the communities would give up their claims to land in favour of the state and dependence on the government –which is seen as unpredictable and yet needs to prove its trustworthiness– is not a comforting thought. Official law, then, is invoked when it suits the needs of the Gunung Lumut communities and does not pose a direct threat to their claims. It is, however, as I will argue in the next paragraph, also a way of opening channels of communication; of diplomatic contacts between the representatives of *adat* and those of the state.

### Relations of authority

Official law holds precious few concrete grounds for recognition of *adat* land claims, but as long as none such recognition is explicitly desired *de facto* recognition can be obtained to a considerable extent. All four communities hence engage in two primary strategies. The first is maintaining and arguing their claim albeit avoiding forcing government officials to speak out. Ensuring the issue is not brought up with the government in such a way as to force them to oppose it is not the same as recognition, but it is no denial either. The second strategy is to ensure that if a matter of *adat* has to be brought before the government, the issue is embedded in other interests that work in its favour. Examples are the recognition of Kepala Telake's monopoly against a high tax and the usage of *adat* land for a new plantation in Belimbing. By and large, Gunung Lumut's communities are positioned favourably for this. Remote from the district capital and in the periphery of Paser's economy and society, the communities' affairs are relatively withdrawn from the eyes of the government. Evading unnecessary communication and ensuring that such affairs as are potentially disagreeable need not be dealt with in interaction with the district government hence is a useful strategy, but not one that can be maintained at all times. In Mului, the independence of *adat* is what legitimizes a minority's authority in affairs that are officially the domain of the village government of Swan Solutong. If the validity of Mului's *adat* is not demonstrated from time to time, its authority will be lost. For the people of Mului, an alliance with *adat* NGOs and a clear *masyarakat adat* identity ensure them of much needed allies in

maintaining their difficult position. Other communities choose not to align themselves to *adat* NGOs for exactly the opposite reason that the Orang Mului have: by not openly declaring themselves in favour of recognition of *adat* rights –although they certainly are– their space for manoeuvre and negotiation with the powerful district government is much larger.

The forces at work within the communities illustrate and explain this position. In the end a community is not seeking national recognition of an abstract notion of *adat*; individuals and families seek continuation of their access to the land that they have claimed as theirs for generations and are dependent on for their daily needs. Yet managing the usage of these resources and the access individuals have are powerful –and contestable– positions. What is a forest? A 'bank' as Jidan of Mului says, or a source of income that can generate fast cash, as the former village head of Rantau Layung advocated? Such differences diminish a community to rivaling factions and –possibly– eventually to a collection of individuals pursuing private interests. In Rantau Layung the collapse of the community was underway and although the *adat* leader has averted new rivalry by having his young niece, who is firmly under his control, made the new village head, his refusal to allow logging in Rantau Layung extensive forests is not winning him friends. The path taken in Kepala Telake of allowing local logging and having all loggers –outsiders or locals– pay tax to the village seems to be far more successful from both economic and social perspectives. The community of Kepala Telake was disappearing, but is now growing exceptionally due to its strong economic potential. The success of village heads or *adat* leaders depends on their ability to generate and maintain secure land access, economically favourable circumstances and a sense of unity within the community. Failure results in contested positions.

### New opportunities

In Gunung Lumut the position and meaning of communities' claims to customary land thus consist of an intricate mixture of local practices that are honed and reshaped in a dialogue with outside influences. The legal confusion and governmental disengagement from local affairs that followed decentralisation allowed heads such as the village heads of Kepala Telake and Belimbing to engage in the successful development of their villages' economies even if part of their efforts was –in Kepala Telake– strictly speaking illegal. Likewise, the emergence of champions of *adat* rights throughout the nation provided the people of Mului with much needed allies and gave the *adat* leader of Rantau Layung the chance to win his rivalry with the village head. By carefully balancing opportunities and support and maintaining a close watch on what goes on outside the mountains as well, Gunung Lumut's mountain communities have managed to profit from the events following *reformasi* relatively well. Their 'out-of-the-way' location added to this result. Beyond the immediate interest of the regional government and elite the communities are placed quite well to watch the world go by and take advantage of what they see.

Paser's regional government does not appear to be much inclined to alter this situation or bring the communities under control. A strict application of forestry legislation would see logging practices in Rantau Layung and Kepala Telake ended,

and the entire village of Mului resettled. Yet what would be the gain? Increased protection of the mountain forests is not in the interest of Paser's economy, as the forests largely fall under the authority of the national Ministry of Forestry. With *reformasi* redirecting the interest of regional government to their local constituency and with administrative decentralisation empowering them to operate independently from Jakarta, there is little point for Paser's regional officials in strict adhering to the autocratic rules of the Ministry of Forestry. The regions are in charge of their own affairs now, and putting the empowering rules of the decentralisation laws before the restricting ones of the Forestry Law hence makes sense.



# The laws of the Krayan Highlands

6

Land at the border of the state

- 1) The principle of fining according to *adat* is valid for everyone who commits an offence in the adat territory of Krayan Darat.
- 2) Every person living in the *adat* territory of Krayan Darat must submit to adat law.

*General principles one and two in Krayan Darat's adat book*

The Krayan plateau, the homeland of the Dayak Lundayeh, lies in the mountainous heart of the island of Borneo. It forms Indonesia's north-western border with Malaysia. The area's governance is carried out jointly by *adat* authorities and representatives of the national government, giving the Lundayeh a level of government leverage that stands in stark contrast to that of most *adat* communities throughout Indonesia. The daily administration of Krayan is a process in which authority is rudimentarily shared between the sub-district level government and Lundayeh *adat* leaders. This division is not fixed, but allows for renegotiation of responsibilities as social and political circumstances require. This makes Krayan's administration a dynamic political arena. Local leaders utilize its possibilities to acquire or increase social and political influence. As the main alternative to the government administration, *adat* is the chief source of power for those aspiring to an influential position. Yet, as Lundayeh *adat* has a tightly organized, hierarchical internal structure of authority in which positions are often hereditary, *adat* leadership is an elite position that only few can reach.

The demands of *reformasi* for an end to corruption and for greater transparency in government resonated in Lundayeh society as the transparency of *adat* decisions was evaluated and the self-evident hereditariness of the position of *adat* leader brought into question. Incumbent leaders have been subjected to increased critical reflections on their decisions and on their individual qualities. For them, individual profiling, inspiring confidence and radiating capability have become essential as their position transforms from a traditional function reserved for a hereditary elite to one that is increasingly open to criticism and contestation.

This chapter's immediate subject is access to land in Krayan, but it takes this issue as a point of departure for an analysis of the power relations among relevant authorities. The preceding chapter on land issues in Gunung Lumut highlighted the diverse roles and strategic potential of *adat* leaders and village heads in four communities. In Krayan, the same authorities can be found and addressed. Yet other than in Gunung Lumut, both types of authorities dispose of higher levels of organisation that transcend the village community and engage on the level of the sub-district and even on that of regional politics. Through this higher level of organisation Krayan's *adat* authority possesses a strong influence in the affairs of the (sub-) district government. Other than in Gunung Lumut, the two authorities maintain a *de facto* division of tasks at the sub-district level that precludes competition over public favour. Maintaining this division, notably vis-à-vis the higher



level of regional government, does however require constant affirmation of its potency. The political processes that this requires come to the fore in the teamwork between state government representatives and *adat* authority and form the chapter's second theme. Its third subject is the position of *adat* leaders within Krayan society. Whereas *adat* leaders present Krayan's inhabitants as united and single-minded regarding the authority of *adat* in their midst, this research shows that such undivided support is not quite in line with actual affairs. Where *adat* works against them local people regularly attempt to address alternative forums. This makes that the authority of *adat* is not only applied in settling disputes, but also in keeping the state out and the population in. Being an *adat* leader is not necessarily about democratic decisions or the fluid functioning of society; it is also about maintaining a specific social structure and carefully incorporating unavoidable changes.



Arrival in Krayan

The chapter consists of four major parts. Section one is a discussion of the particulars of government in Krayan. It considers the roles of both *adat* and state authorities and the particular symbiotic relation in which they cooperate. It shows that local government officials leave specific authorities with the *adat* leaders, while the latter engage government officials when pressure beyond their own immediate powers is needed. Sections two and three focus on the internal structure and power mechanisms within *adat* authority. Section two is a discussion of the make-up and internal rivalry within the *adat* structure. Section three deals with *adat* procedures and pays particular attention to attempts to make *adat* more transparent by writing its rules down in *adat* law books. Section four deals with what may be considered *adat* jurisprudence. The section consists of four detailed discussions of cases of conflict over land and the normative and social aspects that underlie the

ensuing decisions and settlements. It is an extensive section in which I particularly attempt to provide insight in processes and tensions as found within *adat* cases. The final section, section five, deals with the political and power dimensions of *adat*-government cooperation and focuses on the consequences of an *adat* leader's sentencing of two soldiers of the Indonesian army.

## 6.1 Governing Krayan

The position of *adat* leaders in Krayan must be the envy of many of their colleagues in other parts of Indonesia. Krayan's *adat* functions as a legitimate and independent normative system that takes precedence over national legislation in various fields of authority. These two different authorities coexist in a close, almost symbiotic relationship. Essentially, public affairs such as road maintenance, education, health and other matters of common interest are under the control of the sub-district government, whereas private affairs are generally managed by the *adat* authorities. This is not an absolute division so it is in the interest of both authorities to maintain a close and productive cooperation. Their present efficiency has the respective authorities in a favourable light with the local population and with the district government and has attracted the interest of neighbouring districts' governments as a potential example of how to implement fruitful cooperation between tradition and the state.

### Practicing governance

*Adat* leaders form the local counterparts to the local representatives of the state. In other areas in Indonesia, *adat* authority often maintains a strong position due to a lack of, or weak, official government control. In Krayan, and various other parts of East Kalimantan, government and *adat* have been involved in each other's affairs since the imposition of Indonesian state rule in the area in colonial times. Associating *adat* leaders with the formal administration apparatus meant that an existing and locally accepted hierarchical authority was incorporated into the official government structure. This policy proved an efficient means of introducing government administration into such areas and also established a level of, albeit largely nominal, formal control over the area.

Krayan's dual structure of official government and *adat* officials forms an unusual system of local governance. For *adat* the lowest authority is the village level *adat* head, who is responsible for the management of daily affairs and settling minor disputes among villagers. The village *adat* heads are assisted by a council of *adat* specialists – usually made up of elder men – which offers comments and suggestions as the *adat* head and parties discuss a case. If disputants hail from different villages, the *adat* heads and sometimes councillors from each village are involved in finding a solution. If parties dispute the decision taken by the village *adat* authorities, they can request Krayan's paramount *adat* authorities to review the case.

Krayan is divided into four *adat* areas, each of which is governed by a paramount *adat* head (*kepala adat besar*). The territory of the four areas of Krayan Hulu, Krayan Tengah, Krayan Darat and Krayan Hilir together more or less follows the borders of the government sub-district. The four areas differ in population -each has different Lundayeh sub-group majorities- and in their specific *adat* rules. The paramount *adat* heads thus function not unlike a court of appeal. They hear the case again, consider the decision of the village *adat* head and may choose to formulate a new decision. In that case usually no reference is made to the decision of the village *adat* head in question, but that individual village *adat* head is usually included among the paramount *adat* head's councillors. This is, however, not obligatory. A senior member of the council often holds the position of assistant *adat* head (*wakil kepala adat*), who is to take over in case the paramount *adat* head is indisposed.

Decision-making processes move in opposite directions among government and *adat* leaders. In the government process the sub-district head receives instructions from the district government and either implements them himself or delegates them to the village heads. In *adat*, issues are first discussed at the village level before the process moves up to the paramount *adat* head of the area. It happens that a district government instruction to be delegated to and implemented at the village level, there causing an *adat* issue which moves up to the paramount *adat* leader, who in turn contacts the sub-district government to reach a satisfactory settlement together. The resettlement of Lundayeh longhouses in the 1960s in new settlements of single-family houses contributed to this complex structure. Defined as villages by the district authorities, the Lundayeh population view these settlements as *lokasi* (locations) where the populations of several longhouses -these days equated to villages-live together without losing their independent status. The sub-district government accepts this view, and lists most locations in Krayan as consisting of several villages. Hence:

Location Long Bawan		Location Terang Baru	
villages	population	villages	population
Long Bawan	393	Liang Biadung	78
Long Katung	353	Pa'Terutung	95
Liang Butan	353	Pa'Matung	40
		Wa'Laya	231
		Long Rupan	24
		Long Matung	262
		Pa'Putuk	55
total	1099	total	785

Source: Krayan sub-district statistics office

The district level does, however, not recognise these subdivisions, so contrary to *adat* administration and sub-district registration, official village administration is carried out at the level of the location. For instance, the sub-district capital of Long Bawan has one village head, but three village *adat* heads and councils. Long Bawan is located in the *adat* area of Krayan Darat and that area's paramount *adat* head lives in the village. By contrast, the nearby location of Terang Baru has one village head and eight *adat* heads who also act as *adat* council for the location as a whole. The paramount *adat* head of Krayan Hilir lives in Long Umung, a village some four hours removed by motorbike.

All locations are built on the *adat* land of one of the longhouses located there. This means that all other members of the location community live on land not belonging to them. Although people moved there on government instruction this occasionally leads to problems. Such as conflict between a house owner and a third party with *adat* land rights, or when either land or a house built upon it are sold. Rice fields and gardens feature significantly less in these inter-longhouse disputes because these are usually located in each longhouse's area of origin, on its own *adat* land. When fields are not in use, their owners rarely visit them and lands may lie fallow for years at a time. This does not mean that an owner has given up his claim and new activities on such lands by others can lead to long and bitter disputes. It is not uncommon for parties to come to blows over such issues, which does however add considerably to the severity of the case and the ensuing *adat* verdict.

The man in the middle

Whereas *adat* enjoys considerable autonomy, Krayan is very much a part of the Indonesian nation. The sub-district government forms the immediate link between the district government of Nunukan and the population of Krayan. An important part of its daily practice hence consists of fitting the plans of the one to the ideas of the other. As both the district government and the local *adat* leaders attempt to enlist his services, the sub-district head Serfianus, or Serf, a Lundayeh himself, feels that he actually needs his negotiating and diplomacy skills more than the authority his position gives him.

Local recognition of *adat* authority was sporadic but not uncommon in East Kalimantan's districts. In 2000 this situation appeared to change as many districts started discussions and policy developments on the issue, but only Nunukan established the relation between *adat* and state authority in a district regulation. Serfianus believes that he is probably the only sub-district head in Indonesia who has to deal with what he calls *otonomi adat* (*adat* autonomy), in an allusion to regional autonomy. Neither the district government nor the national government have formulated legislation instructing him on exactly how *otonomi adat* should be implemented, yet he enjoys his pioneering position and the interest it attracts from other officials.

Serf feels that his main task is to safeguard relations between *adat* leaders and government authority. If Krayan's sub-district government allows the *adat* leaders

to act as they please, he feels, they are bound to undermine government authority and squander the goodwill that the concept of *otonomi adat* in Krayan has accumulated at district level. This would provide adversaries of Krayan's *adat* autonomy within the district government to strive for, and possibly obtain, a retraction of the district government's recognition of Lundayeh *hak ulayat*. Restraining the *adat* heads in their dealings with officials is hence another of his unique position's tasks. Following a number of recent events, Serf has made it clear that cases in which district officials, police officers or soldiers are involved do not come under the authority of the *adat* leaders but must be forwarded to the district court in Nunukan.

In defining and broadening the authority of *adat* with Nunukan's district government, Serf and the *adat* leaders depend on the same small group of allies. These are ethnic Lundayeh members the district parliament and Lundayeh in senior positions within the district's administrative apparatus. Some of these have close contacts with the *adat* authorities back in Krayan.<sup>1</sup> These remote yet highly important allies field effective support within district government. Although competition between *adat* leaders and sub-district authorities is subordinate to their mutual need for each other's support, it is a permanent and relevant factor.

Serfianus feels that although decentralisation has not substantially altered his official tasks, the potential for popular influence in higher-level politics has greatly increased and instilled a need for greater public responsiveness in these levels. Because of this Serf is seriously considering moving to a position in the district administration or trying his chances at obtaining a political position in the district parliament. The challenge of such work greatly appeals to him, and he can probably muster the support to realistically consider these possibilities.

### Sidelined government authorities

Next to the sub-district officials, the Indonesian state is represented in Krayan by police officers and army personnel. Their positions in Krayan are markedly different from the positions these officers usually hold in Indonesian society. The authorities and tasks usually associated with the police are largely encapsulated in the domain of the *adat* authorities. This means that the police are expected to respect and support the *adat* leaders rather than act as an independent authority. On the whole, the small and ethnically mostly non-Lundayeh local police force has accepted this situation. For the most part temporarily stationed in the area, they see little point in upsetting the peace. A local officer told me how, in the 1980s, a freshly arrived chief of police refused to comply with this arrangement and arrested wrong-doers while insisting he would not hand them over to the *adat* councils. The matter came to a head when rumours circulated that a Lundayeh detainee was about to be airlifted out of Krayan to stand trial at the district court. An angry mob removed the prisoner and torched the police station. The chief wanted his officers to resist, but the men, living in Long Bawan with their families, refused. Ordered to fire warning shots, the officer told me "if we did, the people would think we were shooting at

<sup>1</sup> For instance, one of the senior Lundayeh members of parliament is the younger brother of the paramount *adat* head of Krayan Hilir.



Yagung Bangau and a government official discussing administrative matters in Long Bawan

them and while we have guns, so do they. They make guns themselves or have kept them from the *konfrontasi* with Malaysia."<sup>2</sup>

Police in Krayan thus have a pragmatic approach to their role. As official peace-keepers, they are asked to lock up drunks for the night and assist in settling minor misdemeanours if necessary, yet popular opinion keeps a tight rein on their authority. The station lies deserted after lunchtime and it is rare to meet an officer in uniform in the afternoon. The officer referred to above explained that the population frowned upon an overzealous display of police identity and wearing a uniform in the afternoon would solicit inquiries of "whether one is up for promotion or just a show-off", to the merriment of all around.

In an unexpected turn of events, the Muslim terrorist bombings that have hit Indonesia in recent years have brought Krayan's police new respect. The potential of Nunukan as a transit port for malevolent foreigners has emphasized the district's border with Malaysia.<sup>3</sup> Whereas the port now receives extra police attention, the district's long inland border is, given the forested and hilly nature of the terrain, difficult to guard. Although the likelihood of foreign terrorists undertaking the difficult and far from anonymous journey through Borneo's interior in order to enter Indonesia seems remote, rumour in Krayan has it that Muslim district authorities are unwilling to allocate extra resources on guarding the predominantly Christian hinterland. Long Bawan's police have risen to the occasion with gusto and emphasize their role as protectors of the population. A close screening of all individuals entering Krayan from Malaysia, as well as of all non-locals coming to Krayan from Indonesia is maintained. The role of the police hence remains limited within Lundayeh society, but their importance as protectors against malignant influences from outside has certainly increased their local status.

The national army has a similar position. Since the days of *konfrontasi*, pickets of soldiers have been stationed in hidden encampments along the border to repel any surprise attacks. The military also guards the border at Long Midan, where the one existing road out of Krayan crosses into Malaysia. These days, they may not so much be guarding against a Malaysian invasion as against smuggling and illegal immigrants, but the military presence in the forest as a potential line of defence against terrorists is greatly appreciated in Krayan. Once they leave the forests and enter the villages however, the soldiers lose a lot of their appeal. On several occasions, soldiers have been involved in fighting or caused other troubles and hence greatly decreased the tolerance of their presence. To avoid the flaring of tempers and further casualties, the local commander now keeps troops outside of the village as much as possible; a measure that was implemented under the increasing influence of the *adat* leaders.

Krayan's strategic location and history within Indonesia significantly contributed to the area's relative autonomy. The Lundayeh have a strong reputation as

<sup>2</sup> Conboy (2003:175-176) cites an Indonesian army officer who reports that local militia and volunteers were very willing to hand in arms distributed by the Indonesian military. Yet several informants confirmed (and proved to me) the police officer's statement that guns are present among the area's population. These seemed however to be local products rather than professional military arms.

<sup>3</sup> Philippino insurgents sailed to diving resorts on the northwest coast of Malaysian Borneo and kidnapped twenty tourists in 2000, and bomb detonators and fuses smuggled into Indonesia via Nunukan were discovered in 2005 and again in 2006 (cf. Sinar Harapan, 22 October 2005; Kompas, 17 February 2006).

Indonesian nationalists among the nation's military. Krayan men fought alongside allied Special Forces against the Japanese in the last year of the Second World War (cf. Harrison, 1986) and assisted Indonesian troops during the konfrontasi with Malaysia, when Long Bawan was a base for Indonesian Special Forces.<sup>4</sup> The Lundayeh's proven record as nationalists is believed to have earned them the implicit approval of East Kalimantan's military commanders for their adat autonomy.<sup>5</sup>

### Regional government recognition of *adat* authorities

Government recognition of the authority of adat leaders in Krayan always referred to these paramount adat heads and a number of village-level assistant adat heads. An example is a decision of the district head of Bulungan of 1979, in which adat heads and assistant adat heads are being awarded a rise in their individual monthly allowances of 10,000 (adat head) and 5,000 (assistant adat head) rupiah respectively.<sup>6</sup> In April 1999 the district head of Bulungan, of which Nunukan then still was a part, decided that the secretary, treasurer, and members of the adat councils would receive an allowance as well. The decision does not give amounts, but states that a maximum of ten percent of the district funds paid to the village governments in the adat areas may be applied.<sup>7</sup> When Nunukan became an independent district its government retracted the right to award the adat councils up to ten percent of the villages' government funding and reverted to paying a fee only to the adat head and the assistant adat head. These were established for all four adat areas at 50,000 and 40,000 rupiah respectively.<sup>8</sup>

Lobbying and otonomi adat ensured a raise of payments to 200,000 and 150,000 rupiah respectively in 2004, emphasizing the increased administrative importance of the adat leaders after the initial 1999 diminution.<sup>9</sup> Nunukan government officials motivated the policy in terms of recognition of adat leaders' support of government goals and emphasized the adat heads' role as middlemen in governance and policy implementation as well as in maintaining order in the district. The position of the government is that the payments are made in recognition of these services but recipients in Krayan consider them as government homage to adat authority.

4 See Kompas (23 March 2005) and Radar Tarakan (2 January 2003) on present day conditions of veterans in Nunukan.

5 Although I do not possess any written documentation sustaining this statement, interviews and discussions with military personnel and veterans both within and outside of Krayan convinced me of its legitimacy. A strong argument in its favour is the continued existence of an authoritative *adat* structure in the area where similar structures have been replaced by government authorities in areas throughout the nation.

6 Decision of the district head of Bulungan number 2 of 1979 (surat keputusan bupati kepada daerah tingkat II Bulungan nomor 2 tahun 1979).

7 Decision of the district head of Bulungan number 148/SK-164/ 1999 (surat keputusan bupati kepada daerah tingkat II Bulungan nomor 148/SK-164/ 1999).

8 Decision of the district head of Nunukan number 140/SK-118/2001 (surat keputusan bupati Nunukan nomor 140/SK-118/ 2001).

9 Decision of the district head of Nunukan number 162 of 2004 (surat keputusan bupati Nunukan nomor 162 tahun 2004).

### Cooperating authorities

Villagers and village heads keep informed of adat decisions as the consequences of many cases, notably those concerning land, indirectly concern the entire community. This is done both through word of mouth and through occasional written reports, which the adat councils draw up if they deem the case sufficiently important for the community as a whole or for the development of Krayan's adat. Copies of these reports are kept by the councils, but the majority of cases are decided without attracting public attention. As a conflict takes longer to resolve, it gradually becomes more public and a general interest develops throughout the local or even regional community. This is, firstly, because more authorities, both adat and formal government, may become involved as the conflict continues, but also because parties tend to enlist increasing numbers of witnesses or supporters to publicly take their side. Deciding these issues then becomes an event in itself and the outcome provides conversation topics for weeks to come.

Ways of dealing with problems thus range from settling minor conflicts to public debates on complex issues with the highest authorities. How far parties are willing to go heavily depends on the issue but also on personal attitudes, social standing and the case's economic potential. Contrary to what adat leaders maintain, the sub-district head is the final authority in practice. His task is to bring the weight of official government to bear in support of the adat decision. His involvement implies that the adat authorities will sanction handing over the case to the police or to the district court if necessary. Rare as it may be, a summoning before the sub-district head usually suffices to command compliance.<sup>10</sup>

Adat punishments are generally considered to be more severe than punishments under national legislation. The sub-district head as well as the police are thus quite willing to have cases judged by the adat heads, including those related to minor criminal offences. In such cases a police officer is expected to be present as a witness at the adat session, and a written statement of the decision is sent to the police office. In case the convicted person does not carry out the terms stated in the decision, he runs the risk of being handed over to the police for punishment under national law. A conviction under national law does not forfeit the adat punishment unless the official law punishment is considered suitably severe, which is rarely the case. For instance, under adat law a murderer must pay a fine of buffaloes or their monetary equivalent to the victim's relatives, whereas national law will likely see him sentenced to a jail term. Such a punishment is not considered equal to the adat sentence, as it does nothing to compensate the relatives. Once the convicted person is released from jail he will thus have the adat sentence awaiting him. Some years back, a judge at Bulungan's district court therefore decided to send an individual convicted of murder back to Krayan after only two years in prison. The judge new that the community in Krayan would demand an additional adat sentence and decided to limit the prison sentence accordingly.<sup>11</sup> Moreover, if the condemned per-

10 Yet asking for the support of the sub-district head involves a risk for the *adat* leaders in that their request might be refused, which would cause them considerable embarrassment. As yet this has not happened, but it makes it important to obtain information on the sub-district head's stance in a case before requesting his support.

11 It is unclear whether this case established a precedent, as very few murders have place in Krayan.



son was unable to pay the fine (on account of being in jail, for instance), it would be placed on his family and relatives, making a jail sentence an impediment to the return of normality rather than an appropriate punishment.

The position of adat in the government of Krayan is strong. Yet, as with administrative systems in general, a lot depends on the individual persons representing this authority to the population and on transparency of the system. The next section therefore focuses on the internal situation of the adat administration.

## 6.2 Inside the *adat* authority

More than anything, Krayan's adat authorities are called upon to solve conflicts among the population. These range from conflicts over property to settling a case of adultery; of arranging the material consequences of a divorce to having the doctor's bills settled after a violent fight. Sentences always come in the form of fines; physical punishment or imprisonment is not applied. As they carry out a mix of social, judicial and political tasks, the main function of the adat authorities is maintaining the peace and unity of society or restoring it when damaged. Therefore, their reputations are of considerable importance. Individual leaders must be known to be honest, educated, well-versed in adat and respected in society. Being a pious Protestant and abstaining from drinking alcohol are looked upon favourably in these exemplary functions. Although this does not exclude political intrigue or even corruption from taking root in individual adat leaders or even entire adat councils. It is the task of the entire body of Krayan adat officials, but even more so of the population governed by them, to guard against such influences and take correcting measures if necessary.

### Adat leaders

Each village or former longhouse has its own adat head, who is the first authority to whom grievances should be addressed. In all the cases I encountered, the adat head was male and usually aged over forty.<sup>12</sup> Sometimes younger men became adat heads, but this was rare. Without exception, the paramount adat heads of the four areas were male senior citizens of respected families and advanced age. Traditionally, the position of adat head used to be a hereditary one going from father to son, from brother to brother or from uncle to nephew. In many villages this is still usual but on the prominent and influential level of the paramount adat heads a radical break with this tradition has taken place.

In 2003 a sizeable part of the population of Krayan Darat reached the limits of their patience with their local paramount adat head. The adat head, Fairy Palung, had gained a reputation for inconsistency, unfairness and corruption, and even though he was a son of one of the most respected paramount adat heads in the history of Krayan, it was decided by the population that he should be replaced.

<sup>12</sup> However, no objections exist against *adat* heads being women. Female adat heads are said to occasionally take office, but men are considered to be more eager and knowledgeable. At the time of my visit no female adat heads could be located.

Palung did not agree and abstained from taking part in a meeting to select his successor. The meeting nonetheless continued and from among those who had presented themselves as candidates Yagung Bangau, a local shop cum hotel owner and a well-known, respected individual was elected.

Yagung accepted the position of paramount adat head with enthusiasm. He, and the senior villagers who act as his adat councillors, are spending a considerable amount of their time on deciding cases. This takes place on the first floor of Yagung's hotel, where a seating area is provided for hotel guests or, indeed, for adat meetings. Parties first send word of their intention to consult with the paramount adat head and an appointment for a meeting is made. Often parties come accompanied by their village's adat head, family members and friends. After the village adat head explained his initial conclusion, parties list their objections to it and the case is reviewed anew by the paramount adat head and his councillors. The village adat head often takes part as a councillor on the village situation, but this is not always necessary in the small community of Krayan Darat.

Debates are intense, but seldom very heated. Violence during or following a session of an adat council is very rare. Yagung believes that this is because the main lines of the cases have already become clear during the first discussions and that parties know that these are unlikely to change. Individual litigants added that showing anger at a council's meeting would not work in their favour. Sessions often take one evening only, but may last well into the night. If a session is taking too long the meeting is adjourned until the following morning, but this is exceptional.

### Can '*adat*' be written down?

Yagung and various other adat heads feel that the limited time needed for consideration and the considerable public satisfaction with the outcome are in no small part caused by the paramount adat heads initiative to write the decisions down. An archive of adat jurisprudence is being built up in each adat area and all four paramount adat heads are working on books on adat rules and procedures. They feel that the books will make Lundayeh adat more accessible to its own population as well as to the numerous Lundayeh migrants living outside of Krayan, for whom a visit to a paramount adat head for consultation would be a costly and time-consuming affair. Moreover, the books will make Lundayeh adat accessible to non-Lundayeh. Written in Indonesian rather than a Lundayeh language, the clarity of the books is considered to illustrate the justice and efficiency of Lundayeh adat to both migrants and government officials alike. This can best be done by making its structure and rules visible in a manner that is accessible to officials and other outsiders. It was decided to write the books after the format of national laws as many government officials are familiar with that system.<sup>13</sup> This would make it possible, it was felt, to demonstrate the coherence of Lundayeh adat as a normative and regulatory system and to remove any suspicions of the adat being backward, discriminatory, or a threat to the unity of the nation.

<sup>13</sup> These suggestions were made by Lundayeh who had studied outside of Krayan and lived in other parts of Indonesia. Some of these have a university degree in law, whereas others, such as Serfianus the sub-district head, have a degree in public administration.

Not all in Krayan agree with this course of action. Some feel that the books have little to do with the nature of Krayan's *adat*. Fairy Palung, Yagung's predecessor as paramount *adat* head of Krayan Darat, strongly opposes them. Palung feels that writing down the rules and setting fixed penalties goes against the dynamic nature of Lundayeh *adat* and limits the space for detail and empathy that *adat* allows for. His argument is countered by the paramount *adat* heads who state that the written down *adat* rules provide just the same space for differentiation as unwritten rules do, but are much clearer, more consistent, and more transparent. In their opinion people can be reasonably certain of what is coming even though there remains considerable room for negotiation. Take, for instance, chapter X, article 1 of the *adat* law book of Krayan Hilir. An article on the demolition of third parties' houses:<sup>14</sup>

- a) Whoever demolishes the house of another person with the intention of contravening its owner's rights will be fined 1 abai jar and 1 pig of five kilan.
- b) When a person demolished a house with the intention of stealing goods, the perpetrator will be fined a third of the value of the stolen goods, and one jar.<sup>15</sup>

The rules contain fixed fines in the form of jars and pigs, but the value of these is variable. Earthenware Chinese jars are traditional objects of wealth and prestige, the most valuable of which could equal a human life in the past but nowadays is said to equal the value of around thirty buffaloes.<sup>16</sup> Today they are still used in bridal dowries and in various *adat* ceremonies, and high quality ones are prohibitively expensive to obtain.<sup>17</sup> Newer jars are known as *abai*, such as mentioned in the rule, lesser decorated jars or those showing wear and tear have lower prices and give less prestige. Article 1a thus stipulates that the jar can be of mediocre quality but otherwise leaves considerable room for negotiation. The jar mentioned in article 1b does so even more, as no conditions whatsoever are named for it. Likewise, a pig of five *kilan* only indicates the size of the pig.<sup>18</sup> It does not state whether the pig required is an old sow or a castrated and fattened boar, although these differ markedly in value. It is up to the *adat* council and parties to further decide what kind of pig is appropriate.

In practice people rarely pay in pigs or jars, but rather in the monetary equivalent. Therefore the value of the type pig or jar indicated is nearly always stated in the written *adat* decisions that are eventually drawn up.

All *adat* authorities have the responsibility of maintaining the peace in society. Notably larger conflicts, or those extending over a prolonged period of time, are

<sup>14</sup> This occasionally happens in disputes between owners of houses built on other peoples' land.

<sup>15</sup> That this article is not just a dead letter is illustrated in paragraph 4.4 of this chapter.

<sup>16</sup> See Harrisson (1986:24-29) for a discussion on the traditional role and value of jars in the highland plain societies.

<sup>17</sup> High quality jars are called *ma'un*. The qualification includes antiquity of the vessel, superb crafting, decoration, and in excellent condition, and a good pedigree. Few jars meet these conditions.

<sup>18</sup> A *kilan* is a measurement indicating the length between the tips of the outstretched thumb and little finger of one hand. Obviously not all hands are the same size and pigs of perfect fit are rare, so this leaves space for negotiation as well.

seen as infringements upon society's harmony and implicit attacks on *adat* authority. Harmony must be restored and this is usually done through a public reconciliation ceremony. Traditionally, such a meeting involves the two parties and their families joining in a common celebration during which liberal amounts of rice wine (*tuak*) and pork are consumed. These days, with alcoholic drink largely frowned upon in staunchly Protestant Krayan, *adat* heads occasionally order parties to stage a reconciliation ceremony, precisely describing in their written decision the size and value of the pigs that parties are expected to contribute. Nonetheless parties often prefer to save their pigs for another day and a real celebration, and instead settle the difference in the respective pigs' values financially. Thus the reconciliation ceremonies that are intended as peace-restoring festive occasions have become additional fines. *Adat* heads thus find themselves facing the dilemma of abandoning a tradition that threatens to lose its purpose, or altering its application.

## Paramount rivalry

The position of paramount *adat* head is one that gives considerable standing, influence, and a certain amount of financial income. The importance of standing and influence emanating from the position is not just a concern of the population adhering to the *adat* in question, the local government and the district government pay attention to the person of the paramount *adat* leader as well. As mentioned above, it is common practice in various districts in East Kalimantan to pay local paramount *adat* leaders a small, largely honorary salary. The allocation of these salaries is decided in the district capital, based on information provided by the sub-district heads. In practice, recognition of a paramount *adat* head by the district government does not have much value locally, but it is a bone of contention in the rivalry between Fairy Palung and Yagung Bangau in Krayan Darat.



Long Bawan, Krayan's main village

In the earliest documentation of a district head decision on the subject available to me, of 1979, Fairy Palung's father is listed as paramount adat head of Krayan Darat. The next ones, of 1999 and 2001, have Fairy Palung in that position. The district government was informed of the change of paramount adat head in Krayan Darat by the sub-district head, but no confirmation of Yagung Bangau came from the capital. This does not mean much as such bureaucratic procedures can take a long time and have little priority, but Fairy Palung effectively uses the absence of a new decision to dispute Yagung Bangau's election. Palung argues that the district head decisions listing him and his father as paramount adat heads were both notices of official appointment (*surat keterangan*) and proof of government support for his customary right to the position. The district head's decisions show this clearly, he feels.

A talented and popular speaker, Palung has support for his arguments and although his backing is considerably smaller than that of Yagung Bangau, he remains a local leader whose influence has to be taken into account. For this reason Serfianus declined to speak out openly for one or the other.<sup>19</sup> This officially neutral position of the sub-district head allows Fairy Palung to publicly maintain his claim. He and Yagung Bangau both prefer not to challenge the other openly. First, because such behaviour by a respected paramount adat head would be awkward to say the least, second because each maintains the view that there is no other serious candidate whom they should take into account. Third, and rather pragmatically, because one cannot lose a fight in which one is not involved. Both thus guarantee the continuity of their position, even if they hence have to tolerate one another's competition.

Fairy Palung has installed himself as a sort of court of appeal to adat decisions taken by Yagung Bangau and his council. He has to act discreetly though, for openly challenging Yagung Bangau's decisions would leave Bangau no means to avoid an open confrontation. A relative of Palung owns a hotel some fifty metres from Yagung Bangau's and allows Palung to hold his sessions in that hotel's first floor seating area. Fairy Palung limits himself to carefully reviewing cases brought before him and criticizing or specifying the decisions of Bangau's council. As he has no power to truly alter them, the number of people requesting a review is steadily dwindling, but suffices to maintain his public role as a prominent adat figure. His main forte is his critique of a rule introduced by all four of Krayan's paramount adat heads stating that their adat council takes ten percent of all fines as payment for time and expenses. Fairy Palung maintains that the district government pays the paramount adat head for his efforts and that no additional money is required. Yagung Bangau counters that the amount paid to the paramount adat head these days is nowhere near the time invested (and often adds that the paramount adat head of Krayan Darat is not paid at all due to administrative mistakes by the district government) and continues to state –jabbing at Palung– that if the adat heads who were in function in 1999 had been more assertive district funds would still be available to pay them.<sup>20</sup>

<sup>19</sup> Yet Serfianus supports Yagung Bangau by his actions.

<sup>20</sup> Obviously, Fairy Palung was the paramount *adat* head of Krayan Darat at the time.

The last time I met Fairy Palung was in 2005 in Nunukan city, where he had travelled from Long Bawan after receiving an invitation by the district government to attend a meeting of all the major adat heads of Krayan. As the occasion turned out, of all the paramount adat heads of Krayan only Fairy Palung, who lived in Long Bawan near the airport, had been informed in time. Thus it was upon him to represent the adat leaders of Krayan. One could well ask whether the people of Krayan would agree to that, but as long as the district government remained ignorant of the change that had taken place it was an occurrence that could be expected. Fairy Palung has friends and acquaintances among the district government's staff, whereas Bangau has never visited their offices. Although district level government officials have no role in deciding who the paramount adat head of Krayan Darat is, but if one among them would decide to take sides, Palung has a clear advantage.

Both Palung and Yagung are bent on downplaying their rivalry. Neither is willing to admit that his position is contested by the other and both wish to present a unified and stable Krayan to the outside world. If they maintain this stance and keep their problems indoors their rivalry does not have to pose a threat to Krayan's *otonomi adat*. Yet if the frictions over hereditary leadership, written down adat decisions and the meaning of government appointments lead to an open schism in Krayan Darat, the security and certainly for which its adat is currently praised would be in dire states.

### 6.3 *Adat* procedures

The decision to write *adat* rules down and generate a distribution of *adat* decisions among relevant authorities was agreed to by all four of Krayan's paramount *adat* heads. Attempts in Krayan Darat and Krayan Hilir are most advanced. Lalung Balang, the paramount *adat* head of Krayan Hilir, finished a booklet of twenty pages in 2003 and had it multiplied and distributed among the population. *Adat* heads and teachers in Krayan Hilir are discussing the possibilities of introducing *adat* studies into the local curriculum, but as this needs to be approved by the district level education division and, possibly, by the provincial level as well, no implementing steps have been taken. In Krayan Darat the elected paramount *adat* head Yagung Bangau and his council have drafted a book as well, containing some 22 pages and over 260 articles.

The *adat* law books of Krayan Darat and Krayan Hilir are both drawn up according to the examples that district and national legislation provide, but the books are written according to different outlines.<sup>21</sup> The book of Krayan Hilir is a listing of rules categorized according to general themes and less detailed than those in Krayan Darat's book. Lalung Balang is considering drawing up a similarly detailed version later on, but feels that his general descriptions suffice for present needs. The distributed version is the fourth revision of his original draft; the first three versions were discussed with village *adat* heads and members of Krayan Hilir's *adat* councils, who, due to the great distances between villages, had to be visited separately.

<sup>21</sup> Extracts of parts of both books relevant to the subject of this study are included as appendices. Appendix I contains excerpts from Krayan Darat's book, appendix II is on Krayan Hilir.

Each time Lalung Balang included new usable comments, and after three versions and visits to most of the villages he felt the book to be ready.

By contrast, Yagung Bangau believes that the details and clarifications of Krayan Darat’s *adat* rules are one of the main reasons for the smooth settlement of many cases. Yagung Bangau and his council are able to point out the relevant *adat* rules and those sanctions that apply from their book in nearly all cases. As such, the book has gained credibility among parties in *adat* conflict. In both Krayan Darat and Krayan Hilir the workings of the written down rules are generally considered to be efficient and not against the principles of *adat*. Room for negotiation is still present, but parties more or less know what they are in for when they come to the session. Take, for instance, the following case:

An example from Krayan Hilir

Early 2004, a young man named Markus Momo destroyed some planks and boards that had been manufactured on order by Paulus Lawai for Yulianus Seka. Momo stated that he had had a conflict with Lawai, as Lawai claimed that Momo owned him money, which Momo denied. As Lawai did so frequently and publicly, Momo destroyed Lawai’s planks in an angry fit over what he felt was slander. Yulianus Seka, who had paid for Lawai’s work, demanded indemnification and called Momo to appear before the village adat head. Momo argued first that Seka should take the issue up with Lawai as Momo’s quarrel was with him and the planks were col-lateral damage under the responsibility of Lawai, but Seka nor the village adat leader were convinced. As no agreement could be reached, the case was handed over to the paramount adat head of Krayan Hilir, Lalung Balang, and his councillors. They came up with the following decision:

Decision of the Paramount Adat Council of the Lundayeh of Krayan Hilir. Sub-district of Krayan on 20 March 2004 Regarding	
A quarrel over building materials	<i>Bahan bangunan yang menjadi pokok permasalahan</i>
Between -Yulianus Seka, plaintiff -Markus Momo, defendant	<i>Antara -saudara Yulianus Seka, penggugat -saudara Markus Momo, tergugat</i>
Considering -That it is deemed necessary that there will be a judgement in accordance with the clarifications of the plaintiff party and the defendant party - That in addressing the problem between the two parties, the adat council takes the position to immediately deal with and settle the problem once and for all.	<i>Menimbang -Bahwa dipandang perlu diadakan ketentuan-ke-tentuan pertimbangan sesuai dengan penjelasan dari pihak penggugat dan pihak tergugat. -Bahwa dalam menyikapi permasalahan antara kedua belah pihak, dari pihak adat mengambil sikap untuk segera menangani dan menyelesaiakn permasalahan secara tuntas.</i>
Taking into account Adat Law/Adat Regulation of the Lundayeh of Krayan Hilir Chapter VIII article 1a	<i>Mengingat Hukum Adat/Peraturan Adat Lundayeh Krayan Hilir Bab VIII pasal 1a</i>

In passing judgement	Memutuskan
Deciding: First: in accordance with the adat regulation of the Lundayeh of Krayan Hilir chapter VIII article 1a, Markus Momo is fined one third of the value of the building materials that have been destroyed (Rp. 700,000).	<i>Menetapkan: Pertama: sesuai dengan peraturan adat Lundayeh Krayan Hilir bab VIII pasal 1a, saudara Markus Momo dikenakan denda sebesar sepertiga harga bahan bangunan yang dirusakan (Rp. 700,000).</i>
Second: Markus Momo’s motivation that he destroyed the building materials which were processed by Paulus Lawai for Yulianus Seka be-cause of unresolved problems between Paulus and Mathius Momo, is not accepted by the adat council because Mr. Momo in his capacity as Markus’ father has already indemnified Paulus Lawai.	<i>Kedua: Alasan saudara Markus Momo merusak bahan bangunan yang dikerjakan saudara Paulus Lawai untuk saudara Yulianus Seka karena per-masalahan Paulus dengan saudara Markus Momo belum selesai, alasan itu tidak diterima pihak adat karena urusannya menurut Momo sebagai orang tua saudara Markus sudah dibayar saudara Paulus Lawai.</i>
Third: the building materials destroyed by Markus Momo concerned 5,5 cubic [meters]. 4,5 cubic [meters] must be paid for with the sum of Rp. 2,250,000. The remaining cubic will not be paid for because those building materials will be brought in from the land of the village of Bungayan.	<i>Ketiga: bahan bangunan yang dirusak saudara Markus Momo 5,5 kubik. 4,5 kubik diganti sau-dara Markus Momo dengan uang Rp 2,250,000. Sedangkan 1 kubik tidak diganti sebab bahan bangunan tersebut diambil dikawasan tanah desa Bungayan.</i>
Fourth: A meeting to decide upon the execution [of the work] on the mentioned [border]land between the villages of Bungayan and Wi’Yagung has not been decided as yet.	<i>Keempat: musyawarah penetapan pengelolaan pada watas tersebut diatas antara desa Bungayan dengan Wi’Yagung belum pernah ditetapkan.</i>
Fifth: for the reconciliation Markus Momo is fined one pig of five kilan (to the monetary value of Rp. 500,000) while Yulianus Seka is fined one pig of four kilan valued at Rp. 400,000. This decision is valid from this moment onwards.	<i>Kelima: untuk perdamaian saudara Markus Momo dikenakan satu ekor babi sebesar lima kilan (nilai uang Rp. 500,000) sedangkan saudara Yulianus Seka dikenakan satu ekor babi empat kilan diuang-kan Rp. 400,000. Keputusan ini berlaku sejak ditetapkan.</i>

The decision includes a number of important considerations. First, *adat* regulation chapter VIII article 1a is quoted. It states that if someone destroys common goods, the offender is fined a third of the goods value while he must also replace the destroyed goods.<sup>22</sup> The rule refers to ‘common goods,’ whereas the planks were private property, but parties agreed to its application to honour Momo’s argument that he had no idea the planks in fact belonged to Seka. Moreover, Lalung Balang told me afterwards, no specific *adat* rule referring to the destruction of private property has been written down as yet, but it will likely carry the same fine as the destruction of common property. Hence the *adat* council felt it could allow the us-age of chapter VIII article 1a. The council does not accept Mathius Momo’s argument of the planks being ac-cidental damage. This is not in the least because Momo’s father, who did not agree to it either, had already settled the issue that sparked Momo’s anger with Lawai. Momo’s father decided to do so to avoid further escalation of the conflict, and because friends and neighbours had informed him that Lawai was right. The *adat*

22 Seseorang merusak barang umum, si pelaku didenda sepertiga nilai harga barang, sedangkan barang yang dirusak diganti.



court accepted the reconciling gesture of this action as appropriate and correct. Third, the damage needed to be redeemed, but as Seka had needed the planks for the construction of his house he had had new planks fabricated in the meantime rather than suffering a considerable delay to his house building. Hence Seka no longer required 5,5 cubic meters of planks but preferred to be indemnified in cash. The *adat* council, however, wanted both parties to engage in cutting planks together as a public token of reconciliation. To improve public exposure, the wood needed to be taken from a high, forested area in between the two villages that parties hailed from. Finally, parties were expected to have a reconciliation ceremony to which each had to contribute a pig. Both sides were held responsible for breaking the community's peace so both had to contribute, but whereas the size and value of the pigs were an indication of the severity of the violation, the difference in size could be considered as an indication of the culprit. Neither Momo nor Seka was much inclined to have a ceremony together or exchange pigs so they settled the difference in value instead, with Momo paying Seka 100,000 rupiah.

The serious nature of the case – Momo had destroyed the property of Seka – meant that the *adat* council was bent on a visual and public reconciliation. In reality this failed to take place as both parties kept postponing the occasion. After several months of this, the need for the ceremony had lost so much momentum that the *adat* council expected that it would not take place. Would this, I wondered, not be explained as a reprehension of *adat* authority by Momo and Seka? The *adat* council did not agree. All fines had been paid, the case had attracted considerable public attention and the relations between parties had been normalized (perhaps due to their common desire to avoid the reconciliation ceremony, a council member observed), so the desired result had largely been reached.

Momo and Seka were part of the same community as the *adat* council members. They were even relations to some. The *adat* of the Lundayeh, on the other hand, left space to incorporate a changed situation. As far as he was concerned, the case was over.

### Land issues in *adat*

As most of Krayan is located on a sparsely populated highland plain, the Lundayeh have no lack of land suited for agricultural purposes. Each village has an *adat* territory of communal land based on custom and historical arrangements. These *adat* territories are, generally speaking, referring to land and natural resources as communal property. Individual claims can be made to land that is cleared and worked, to garden plots maintained in the forest and to individual trees, provided these are marked by their owner. Emphasis is placed on rice fields. The Lundayeh maintain wet rice fields, known locally as *sawah* or *bah*. These rice fields produce one harvest per year. The rice takes six to seven months to mature before being harvested, after which the fields are left fallow for the rest of the year and buffaloes graze off the stubs while providing the land with natural fertilizer and breaking up the wet earth with their feet. This system of regeneration allows for the rice fields to be reused in one-year cycles without a need for additional fertilizers. Some fields are claimed to have been in use for over a hundred years.



Land and wet rice fields in Krayan

Rice fields are associated with an individual person or family. They can be inherited and children often receive a field from their parents upon marriage. Whereas all other land is subject to communal rights, the private character of *bah* makes the rice fields an exception. Rice fields can be sold privately, even to non-Lundayeh. This is impossible with all other land due to its communal character. Although not officially sanctioned as such, the private character of *bah* has begun to be applied to the land on which the houses in the locations are built as well. Also, national land law is making inroads with land certificates being rare, but appreciated, documents. At the time of research private sales of land involved a mixture of *adat* rules and national law, in which the former prescribed strong conditions and the latter was applied liberally.

*Adat* requires that upon an intended sale of land, witnesses are produced who can testify to the selling parties' actual ownership of the land in question, and to the dimensions of the land. In Krayan Darat the witness is requested to take an oath as stipulated in article 39 of that area's *adat* rules (see appendix X) to ensure his sincerity and truthfulness. The particular oath to be taken (*febulung*) is certain to bring about the death of the oath-taker by supernatural means in case of deceit. Individuals who witnessed the seller's original acquisition of the land to be sold are greatly preferred as witnesses. In case such persons are no longer alive the seller's neighbours are preferred witnesses but when borders or ownership are disputed, negotiations may be necessary. A land sale is hence an opportunity for neighbours to settle land disputes and define borders, which can be drawn out affairs involving extensive negotiations – as will be made clear in section four.

### The *adat* books

The *adat* books of Krayan Hilir and Krayan Darat lack the elaborate detail and structure that a system of national law possesses, but include elements of private law,

public law and criminal law, while some parts even hint at state law. This is largely what they are: a broad collection of rules brought together by the comprehensive needs of two relatively small and homogeneous communities. Compared to the national administration, with its numerous specialisations and bureaucratic procedures, the books are little more than rudimentary leaflets, but this is what the writers intended. Whereas the main principles of the rules are laid down, the sanctions are given in pigs, buffaloes and jars, which act as ‘rules-of-thumb’ rather than absolute amounts. Rules make clear what actions are subject to sanctions and what these sanctions, roughly, are. The dynamism is not in the rule – it is in its interpretation. As rules are formulated in a manner allowing for this, the *adat* of Krayan Hilir and Krayan Darat is not likely to suffer from having been put in writing.

Both *adat* books make it clear that land can be private or communal property and that various tenure rights are applicable to both types. Land can be bought and sold, it can be lent out without demanding rent but against a security, and it can be rented. No matter what form an agreement takes, it must be formalized. This is done preferably by putting it in writing and having it signed by witnesses, but informing the *adat* council will do. Both books contain protective rules regarding land access in Krayan. Only local people can settle the inheritance of land, implicitly ruling out non-*adat* arrangements and national law stipulations. As *adat* regulations regarding the division of inheritance foresee an unequal division between male and female heirs, dissatisfied relatives could seek a review through the district court and national law. *Adat* authorities feel that including these rules should eliminate such possibilities.

The sub-district government authorities and the more remote district authorities consider the *adat* books to be a favourable development. Likewise, police officers in Long Bawan, posted there from Java and Sulawesi and hence unfamiliar with Lundayeh *adat* expressed their appreciation for the consistency and completeness of the rules to me. Being relative outsiders in Krayan they told me that they had initially considered Krayan’s *adat* as an attempt to undermine the authority of the state and appropriate positions of influence for their own gain, but the writing down of *adat* rules allows everyone, including outsiders, to gain insight into the decisions of the *adat* authorities. The books have thus put the *adat* heads in a more vulnerable position, a step they would not have taken if they were only interested in furthering their own interests, the police felt. Likewise, officials of the district head’s law department consider the books to be proof of the strength of *adat* in Krayan. Foreigners to Krayan themselves, they are unfamiliar with its *adat*, and consider the books to support the Lundayeh claim that they have a working *adat* system that the population adheres to. In deciding whether Lundayeh *hak ulayat* was to be recognized by the district authorities – an issue discussed at length in chapter ten – the existence of the books and the various examples of written agreements, property documents and witness statements shown them during a research mission to Krayan made a highly favourable impression. The possibility of providing written documentation to oral claims thus provides considerable support for the Lundayeh claim of being authentic *masyarakat adat*.

The main point of critique by government officials concerns the ten percent of the fines that parties must pay to the *adat* authorities. It has been suggested that

here there is an opportunity for *adat* authorities to enrich themselves illegally at the expense of the community. *Adat* authorities counter that setting this rule discourages individuals from accosting the councils for each and every problem and making the *adat* councils into full-time discussion forums for petty problems. Moreover, referring to the affairs surrounding Krayan Darat’s former paramount *adat* head, they argue that the rule makes council members less susceptible to bribery. Another fear in the government is that this situation could induce *adat* councils to impose as high a fine as possible. Members of the *adat* councils thought this unlikely. If fines would be too high, the population would refuse to pay or even dismiss the council members, they expected.

Moreover, all members of the *adat* councils have their own rice fields and none of them needs the fines to supplement their income. They consider their function an honorary job and the payment they received a token of appreciation for their trouble rather than an actual salary. A simple calculation shows that if an *adat* council of six was required to attend to a six hour meeting in which a fine of 1,500,000 rupiah is imposed, this would mean a communal payment of 150,000 rupiah for six hours’ work by six people, or less than 4,200 rupiah per person per hour. By the economic standards of Krayan, that is poorly paid work indeed. As *adat* council sessions are irregular and often involve meetings in the evenings after a day of working in the fields, the financial benefits alone are insufficient to entice the often senior and at least middle aged men. Social status and recognition of one’s knowledge of *adat* are at least as important, as well as the possibility to “forward and defend Lundayeh *adat*,” as Krayan Hilir’s paramount *adat* head formulated his motives.

## 6.4 Decisions of the *adat* councils

Land tenure regulation in Krayan revolves around historical relations and agreements. Each longhouse has its communal land, and within those families or individuals have certain private rights. Validation of these claims to land is closely linked to the position of *adat* as a governing and normative system. As discussed in chapter three, laws such as the Basic Agrarian Law (article 3) contain the condition that *adat* land claims can only be recognized in so far as *adat* can still be said to exist. It is therefore of vital importance to have the existence of *adat* proven beyond doubt even before *adat* land claims can be made. The BAL does not contain conditions to determine the existence of *adat*, yet it seems reasonable to accept that a general acknowledgement of, and adherence to, *adat* authority by the population of an area is a useful indication of *adat*’s validity.

In this section I discuss three decisions of land disputes by various *adat* councils. The section is intended to clarify the workings of these councils, the actual role of the *adat* books and jurisprudence, and relations between government and *adat* authorities. The first two cases are relatively short and are practical illustrations of the local working of *adat*, while the third case is the Lundayeh equivalent of a lingering court case. All cases revolve around the determination of a settlement acceptable

to parties as well as to the *adat* leaders. Notably the last two cases show that *adat* leaders’ authority does not go unchallenged. Individuals with a strong social position attempt to overrule it, or counter decisions by referring to national land law. When both litigants disagree with the decision, parties continue the dispute among themselves, pointedly ignoring the decision taken by the *adat* leaders. The section thus looks at *adat* in practice as well as at the maintenance of *adat* as a source of social power and influence. The cases are reproduced in considerable detail. As I have stated that *adat* is a social rather than a legal system in chapter two, I felt that extensive discussions are required to show *adat*’s embedding in society and the circumstances under which it applies. The characters of the cases contribute to illustrating this broad diversity: whereas the first two cases concern issues that are treated and settled by the *adat* authorities as undisputed representatives of the community, the last case sees parties challenging the authority of the *adat* heads and engaging in forum shopping in order to get the decision altered.

6.4.1 Experienced *adat* leaders

In the village of Pa’Rebirar, located in the adat territory of Krayan Darat, a conflict arose over the borders of a plot of land.<sup>23</sup> The first party, Petrus Berah, maintained that the land was his as he had been using it for over twenty years. The second party, Bernabas Momo, disputed this and claimed that the land belonged to Merry Bela, whose father had first cultivated it and from whom Miss Bela had recently inherited the land. As a young person, Miss Bela had enlisted the help of her more senior family member, Bernabas Momo, to argue her case before the adat council. Both of the parties brought additional witnesses along to support their case. The adat gathering decided:

Report on meeting of the <i>adat</i> gathering.	<i>Berita Acara Sidang adat</i>
Report on the meeting of the <i>adat</i> gathering of today Friday, 17 September 2004, as contested by Petrus Dabar, Yagung Bangau, Bangau Agung henceforth called plaintiff, and Bernabas Momo, Momo Tay, Merry Bela.	<i>Berita acara sidang adat pada hari ini jumat tanggal tujuh belas tahun dua ribu empat telah diperkarakan Petrus Dabar, Yagung Bangau, Bangau Agung disebut sebagai penggugat dengan Bernabas Momo, Momo Tay, Merry Bela.</i>
The case [concerns] land located in Pa’ Rebirar. After hearing from each party involved in the dispute during the <i>adat</i> gathering, which was brought together on 17 September 2004, a decision was taken by the <i>adat</i> council based on the statements and testimonies of the two parties. The paramount Lundayah <i>adat</i> council of the territory of Krayan Darat considered and decided as follows:	<i>Kasus watas tanah yang terletak di Pa’ Rebirar. Setelah mendengar dari setiap saksi-saksi yang dihadirkan dalam perkara sidang adat, yang disidangkan pada tanggal tuju belas bulan sembAleng tahun dua ribu empat oleh lembaga adat telah mengambil kesimpulan atas dasar keterangan dan saksi-saksi dari kedua belah pihak. Dari lembaga adat besar Lundaye wilayah Krayan Darat telah menimbang dan memutuskan sebagai berikut:</i>

<sup>23</sup> The land in question was a prime location rice field.

Deciding and enacting	<i>Memutus dan menetapkan</i>
1) It is decided and enacted that the land that has been cultivated by mr. Petrus from 1973 until 2004 is found to be the private property of mr. Petrus Berah.	1) <i>Memutus dan menetapkan tanah yang digarap saudara Petrus sejak tahun 1973 sampai tahun 2004 ditetapkan sebagai hak milik saudara Petrus Dabar.</i>
2) It is decided and enacted in accordance with the testimonies of witnesses that the disputed land is actually the property of Bela Liang.	2) <i>Memutus dan menetapkan sesuai dengan keterangan saksi bahwa tanah yang diperkarakan itu adalah benar kepunyaan Bela Liang.</i>
3) It is decided and enacted that mr.Petrus shall pay mrs. Merry Bela the sum of Rp. 2,000,000.	3) <i>Memutus dan menetapkan saudara Petrus membayar uang kepada saudara Merry Bela sebanyak Rp. 2,000,000.</i>
4) It is decided and enacted that the land cultivated by mr. Petrus Dabar will not be recognised when the border which is established by the <i>adat</i> council is changed.	4) <i>Memutus dan menetapkan tanah yang digarap saudara Petrus Dabar tidak dibenarkan meminda batas yang sudah ditetapkan lembaga adat.</i>
5) The land that is contested is limited to the land cultivated by mr.Petrus Dabar.	5) <i>Watas tanah yang diperkarakan hanya sebatas garapan saudara Petrus Dabar.</i>
6) It is decided and enacted, that should in the future a problem arise that disadvantages either of the parties action will be taken in accordance with valid law.	6) <i>Memutus dan menetapkan apabila di kemudian hari terdapat sesuatu masalah yang merugikan masing-masing pihak akan diambil tindakan sesuai dengan hukum yang berlaku.</i>
7) Ten percent of the nominal total of the money will be deducted for the administrative expenses of the <i>adat</i> council.	7) <i>Sepuluh persen dari jumlah nominal uang dibarik untuk kepentingan administrasi lembaga adat.</i>
8) Thus we took this decision of the <i>adat</i> gathering truthfully and observed its correct application.	8) <i>Demikian keputusan sidang adat ini kami buat dengan benar dan dapat dipergunakan sebagai mestinya.</i>

The decision was received with mixed feelings. The *adat* council made it clear that they considered the claim of Merry Bela a valid one, but that Petrus Dabar’s prolonged and uninterrupted usage of the land had entitled him to ownership rights. Therefore they decided that Petrus Dabar should pay an indemnification of two million rupiah and that the boundaries of the land should be meticulously established by representatives of the *adat* council in close consultation with the two parties.

Nonetheless Momo and Bela felt that the case had ended in a compulsory sale of the land for too low a price. What vexed Nusa particularly was that the paramount *adat* head of Krayan Darat had acted as an official witness for Petrus Dabar. Even though Yagung Bangau had not officially taken part in his capacity as paramount *adat* head, his presence and authority added weight to Petrus Dabar’s claim, which Momo and Bela could not possibly counter. There are no rules prohibiting members of the *adat* council acting as witnesses and it is almost inevitable that it occasionally occurs in small communities like Long Bawan, especially since the members of the *adat* council are amongst the most knowledgeable persons with regard to local land affairs. Although Nusa felt dissatisfied with the outcome as the value of the land was much higher, he did sign the decision. Bela received two million rupiah minus ten percent from Simion Dabar.The decision was taken based on the principles laid down in articles 148 and 149 of Krayan Darat’s *adat* rule book (see appendix I), which state that land can remain individual property even after it has been left fallow for an extended period of time. Anyone wishing to use the land

must obtain permission from the owner first.

Bernabas Momo and Yagung Bangau, the paramount *adat* head of Krayan Darat, had been in conflict before. In 2001, just after Bangau’s election as paramount *adat* head, an overgrown plot of land of some 600 square metres, which Nusa claimed belonged to him and his family, had been allocated by the *adat* council to the *Bina Kasih* foundation of the *Gereja Bethel Indonesia* (Indonesian Evangelical Church) for the construction of a school. Construction had not started, but Nusa removed the prepared building materials and burned some of them – mainly dry bamboos – to emphasize his claim. The rest he stored – or so he maintained – in an orderly fashion. He was then arrested by uniformed police officers and taken to the station for an interview with regard to the destruction of the material. When dispatched from the station he was immediately called upon to appear before the *adat* council. There he was fined one and a half million rupiah for destroying the building materials and his land claim was dismissed, although no official reason was given.

Momo called upon the assistance of Josef (see chapter one) who had positioned himself in Balikpapan as the supreme *adat* head of all Lundaya. Momo informed Josef of his grievances and pointed out that Yagung Bangau was closely affiliated to the church. For one thing, Momo showed, Bangau’s election as paramount *adat* head of Krayan Darat had been conducted using the church structure rather than that of the local government. This procedure was not in accordance with government law, nor with the structure of *adat*, or so Nusa claimed, and Bangau had not been confirmed as paramount *adat* head by the district government. Nusa felt that this last point meant that decisions by Bangau and his council were without authority. Josef responded by sending a letter to Fairy Palung, the former paramount *adat* head of Krayan Darat. Josef instructed Fairy Palung to withdraw Yagung Bangau’s decision. However, as Palung had just been ousted as paramount *adat* head by popular vote and Josef himself commanded little recognition as an *adat* leader in Krayan, the action failed to generate any effect other than annoying the *adat* council and confirmed Yagung Bangau’s authority instead.

Momo’s 2001 land claim failed to gain him effective backing: not in the least because the opposing party was supported by the sub-district head, the *adat* council, and Krayan’s police. The claim did not endear Momo and Bangau and even though the 2004 land case was decided in a much more transparent way by a more experienced *adat* council, the chilly relationship between Momo and Bangau did not contribute to its settlement.

The decision that the *adat* council reached in Merry Bale’s claim does in fact raise some questions. Relating to article 148 of Krayan Darat’s *adat* book it is established that land that has been used and then abandoned for a long period of time still remains the property of the person who first used it, thus establishing the validity of Merry Bela’s claim. Article 149 then decrees that anyone who commences to use land which already is the property of another person must pay an indemnification to the owner, thus explaining the 2,000,000 Petrus Dabar had to pay to Merry Bela. This article does however not mention that property of the land is transferred upon payment of the fine. Moreover, the council leaves it at that and does not concern itself with the question of guilt. If it was established that Petrus Dabar used the land

without permission, Merry Bale could have received an additional indemnification (see article 162). If witnesses have testified that the land was in fact the property of Merry Bale, then why was she not awarded its continued ownership? The decision does not provide an explanation for this curious fact. The question whether personal issues between Momo and Bangau influenced the decision can therefore not be fully ruled out.

6.4.2 Family land

In 2005 a conflict over land took place in the village of Liang Butan between Paul Mera and his younger relative Herman Mera, who had come to disagree over ownership and usage rights to a plot of land that had been in their family for decades. The conflict had built up over some time: Paul Mera had allowed his buffalo to graze on the land without consulting Herman, who in turn had cleared part of the land to create grazing land for his own animals. However, the growth cleared by Herman largely consisted of bamboo and fruit trees that, Paul felt, could have provided fruits and building materials in the future. Herman removed these as a provocation and the family brought the case before the village adat council to seek settlement. As the case caused tension in the village community, the adat head asked the village head to attend as well. The adat council came up with the following decision:

Government of the district of Nunukan Adat of the village of Liang Butan	Pemerintah Kabupaten Nunukan Adat Desa Liang Butan
Today, Friday 22 April 2005, the adat gathering of the village of Liang Butan together with the extended family of Paul Mera tried a dispute between Paul Mera and Herman Mera over a plot of land and the crops on it, located in Long Bawan, reaching the following decision:	Pada hari ini, jumat tanggal dua pulu dua bulan april tahun dua ribu lima sidang adat desa Liang Butan bersama keluarga besar Paul Mera memperkarakan sebidang tanah dan tanaman diatasnya antara Paul Mera dengan Herman Mera dengan letak di desa Long Bawan, dengan keputusan sebagai berikut:
1) The land that is used by Paul Mera to keep his buffalo becomes his private property. 2) The disputed land [located] above the former location of the saw mill will be divided equally between Paul Mera and Herman Mera, using the following division: a) Property of Paul Peru: along the Pa'Bawan river with the following dimensions: wide 50 metres and long 100 metres. b) Property of Herman Peru: along the higher part where the hamlet is located with the following dimensions: wide 50 metres and long 100 metres. Regarding the offence committed by mr. Herman Mera of destroying or cutting bamboo and fruits on the aforementioned land, mr. Herman has a fee imposed of two rubi jars or a pig of seven kilan, or converted into money Rp. 3,000,000 <sup>24</sup>	1) Tanah yang telah digarap oleh Paul Mera untuk kandang kerbau tetap menjadi miliknya. 2) Tanah yang diperkarakan di atas tanah bekas mesin soumel dibagi rata antara Paul Mera dengan Herman Mera, dengan pembagian sebagai berikut: a) Milik Paul Peru: sebelah sungai Pa'Bawan dengan ukuran sebagai berikut: lebar 50 meter dan panjang 100 meter. b) Milik Herman Peru: sebelah darat atau tempat pondoknya dengan ukuran sebagai berikut: lebar 50 meter dan panjang 100 meter. 3) Atas pelanggaran saudar Herman Mera merusak atau menebang bambu dan buah-buahan diatas tanah dimaksud, maka saudara Herman dikenakan sangsi sebesar 2 rubi atau dengan babi 7 kilan, dan apabila dihitung dalam uang sebesar Rp. 3,000,000.



Thus is this decision of the adat gathering to be realized by the two parties.

Demikian surat keputusan sidang adat ini dibuat untuk dilaksanakan oleh kedua belah pihak.

Four days later, the village head of Liang Butan sent copies of the decision to the usual authorities. Paul Mera had signed the decision but Herman had refused. The village head included a notification with the copies to the authorities that Herman Mera did not agree to the decision. The case smouldered for some weeks, but in May the sub-district head was approached by Herman Mera to give a verdict. The sub-district head refused and referred Herman to Krayan Darat's paramount adat leader for reconsideration of his grievances. Herman Mera declined, and preferred to follow up on the village adat council's decision instead and make his peace with his family. Both parties accepted the land ownership arrangements laid down in the decision. Among themselves the Peru's arranged to lower the fine and not request actual payment, thus taking the hard edges out of the decision and normalizing family relations.

Nonetheless Herman's action was understandable as the fines were particularly severe. He could be blamed for transgressing article 158 of Krayan Darat's *adat* book which states that no activities can be carried out on disputed land while the case is under consideration, but transgression of this rule is fined with a pig of five *kilan*, not seven (see article 159) and no mention of *rubi* jars is made. However, under article 112 the removal of someone else's crops is fined with two jars and a pig of six *kilan*. It thus seems that Herman Mera was fined particularly severe according to this rule. If the sub-district head had agreed to Herman Peru's request to review the village *adat* council's decision, the case might have taken a different course. This would, however, have soured relations between the sub-district government and the *adat* authorities. The sub-district head had no ambitions to engage in such a power struggle and advised Herman Mera to take his case to the higher level of *adat* authority. Having attempted to sideline the village *adat* authorities by approaching the sub-district head and having failed, Herman estimated that his actions would not contribute to a more favourable solution by the paramount *adat* leader. That Herman Mera opted to take his losses and settle the conflict among the family rather than risk the displeasure of the paramount *adat* leader thus made sense. His family was more than willing to have the issue settled as it did little to improve the Peru's good name, and eventually Herman got quite a good deal in which his payments were not only diminished, but transmuted into payments in name alone.

As this case and the preceding one illustrate, forum shopping is not unusual when one or both parties are unwilling to give in. Notably when parties are local prominent with a power base in society can cases become extended over time and with regard to the number of people involved. The next and final case took sixteen years to conclude. Albeit exceptional in its length, it demonstrates the dynamism in power relations between the sub-district authorities and the *adat* leaders.

24 Rubi are large earthenware jars not unlike abai. They are used in bride wealth and for settling fines.

### 6.4.3 The land, the house and the buffalo

In 1988, Yulius Aleng, a farmer, sold a house and its adjoining land in Long Bawan to Alosius Kaku, a local church minister. The sale was recorded in a letter of notification (*surat pernyataan*).<sup>25</sup>

The article states that the house, the land, and all crops on it (explicitly mentioned are bananas, jackfruit and coffee), a total of 244 square meters, are sold to Alosius Kaku.<sup>26</sup> Yulius Aleng would be paid one adult buffalo, or a smaller buffalo and 30,000 rupiah in cash should a suitable adult buffalo be unavailable. The letter of notification explicitly stated that no one else held rights to the land, and that buyer and seller consented to the sale. It is confirmed by Yulius Aleng's thumb-print (Aleng was illiterate), by Alosius Kaku's signature and the signatures of two witnesses present at the document's ratification.

Initially all went well. Alosius Kaku had not intended to start using the land or the house straight away and a number of years went by before he actually did so. In the meantime, a conflict began to take shape. Paulus Prapat, a local school-teacher who owned land bordering the land just sold to Alosius Kaku claimed that Yulius Aleng had sold the land illegally as it belonged to Prapat. Prapat and Aleng reached an agreement and drew up a letter of notification in 1992. The letter stated that Aleng had sold the house, which was Yulius Aleng's property, to Alosius Kaku, but not the land or the crops grown on it as these were the property of Paulus Prapat. Yulius Aleng again put on his thumb-print and Paulus Prapat signed as one of five witnesses. Copies of the notification were given to various individuals to make sure that no further conflicts would follow at a later time, but no copy was given to Alosius Kaku.

Upon hearing of the letter, Alosius Kaku did not agree to it and went to the office of the National Land Agency in the district capital of (at the time) Bulungan, together with a family member named Muasa Meti. There, Kaku had a certificate drawn up for the land in Muasa Meti's name, thus strengthening his own support and complicating matters by bringing in national law.<sup>27</sup> Paulus Prapat did not have an NLA certificate, and blamed Yulius Aleng who, in turn, decided to seek the support of the *adat* authorities. He requested that the paramount *adat* council of Krayan Darat review the matter and solve the conflict. The council asked both parties to join them in a session to solve the problem.

The meeting proved to be long and reasonably heated. Aleng maintained that he had informed Kaku of the status of the land notwithstanding the fact that the sale's letter of notification explicitly mentioned rights to the land and crops upon it. As he could not read nor write, Aleng maintained, he had no way to check the

25 A procedure prescribed in article 191 of Krayan Darat's *adat* law book.

26 Article 195 of Krayan Darat's *adat* rulebook states that rights to land are only handed over if explicitly mentioned in the sale's agreement.

27 A certificate of the National Land Agency does not outweigh *adat* claims in Krayan. Kaku could thus be quite certain that Meti could not claim the land because he held an NLA certificate. On the other hand, as long as Meti supported Kaku's case, the certificate would deepen Kaku's line of defence and provide an extra obstacle to his opponent.

letter's content himself. He depended on others and had agreed to what Kakuh stated as being the letter's contents. Aleng did not explicitly accuse Kakuh of lying, yet neither would he agree that he had knowingly sold land not belonging to him. Seeing no way to ascertain what had actually transpired between the two, the *adat* council came up with a decision that mediated the interests of both parties.

Decision of the <i>adat</i> gathering of 12 October 1997	
Between party I Yulius Aleng Party II Alosius Kakuh	
Regarding the deed of sale of one local house between Paulus Prapat and Alosius Kakuh.	
1) The house that has been sold by Yulius Aleng to Alosius Kakuh becomes the property of Alosius Kakuh. Alosius Kakuh agrees with the statement by Yulius Aleng that at the time of sale of the aforementioned house the land on which the aforementioned house stands remains the property of Paulus Prapat. <sup>28</sup>	1) <i>Rumah yang telah dijual oleh pihak Yulan Aleng kepada pihak Alosius Kakuh tetap menjadi hak milik pihak II Alosius Kakuh sesuai dengan pernyataan pihak I Yulius Aleng waktu jual beli rumah tsb dan tanah tempat rumah tetap milik Paulus Prapat.</i>
2) The land certificate in the name of Muasa Meti that has been taken by Alosius P. must be returned to the one named Muasa Meti who is named in the aforementioned certificate.	2) <i>Surat sertipikat tanah yang atas nama Muasa Meti yang ada diambil Alosius P. harus dikembalikan kepada yang atas nama Muasa Meti dalam sertifikat tsb.</i>
3) Party II Alosius Kakuh must pay the administration [fee] of the certificate amounting to the sum of 37,500 rupiah. With the annotation by the <i>adat</i> gathering that Muasa Meti must return Alosius' money to the amount of 37,500 rupiah.	3) <i>Pihak II Alosius Kakuh telah membayar administrasi sertipikat sebanyak Rp. 37.500.-. Dengan catatan dari sidang Adat menimbang bahwa dari Muasa Meti harus mengganti uang saudara Alosius Kakuh sebanyak Rp. 37.500.-</i>
4) Party II Alosius Kakuh must pay or redeem the value of the house that has not been redeemed as yet for the sum of 100,000 rupiah, to party I Yulius Aleng.	4) <i>Dari pihak Alosius Kakuh tetap membayar atau melunasi harga rumah yang belum dilunasi sebanyak Rp. 100.000.- kepada pihak I Yulius Aleng.</i>
5) The expenses for an <i>adat</i> reconciliation ceremony must be paid by party I Yulius Aleng to the sum of 300,000 rupiah or a pig of six <i>kilan</i> .	5) <i>Biaya acara perdamaian adat yaitu dari pihak I Yulius Aleng sebanyak Rp. 300.000.- atau babi 6 kilan.</i>
6) Party I Yulius Aleng must pay the expenses for the <i>adat</i> reconciliation ceremony within two weeks, so at the latest on 26 October 1997.	6) <i>Dari pihak I Yulius Aleng membayar biaya acara perdamaian sidang adat selambatnya ditempo 2 minggu yaitu paling lambat sekitar tanggal 26 oktober 1997.</i>

The decision was reached and signed by no fewer than two *adat* leaders, five village heads, two village treasurers, two village secretaries, and a school head. The paramount *adat* leader of Krayan Darat ratified it. As ordered, Yulius Aleng paid up the equivalent of a pig of six *kilan* under the terms of the reconciliation ceremony. However, the ceremony did not have the intended consequences.

<sup>28</sup> In fact, Kakuh did not agree to such a statement and maintained that it did not exist. The reason why he did not object to the formulation of point one is that it would allow the council to reach a decision.

## Home improvements

A few months later the problem reappeared. Alosius Kakuh had decided to improve and enlarge the house, and in so doing appropriated more of the contested land's surface. Krayan Darat's paramount *adat* leader, anticipating trouble, immediately sent him an official letter stating:

Based on the written decisions of the village [council] and on the written statements of the various parties involved in the case of the sale of the disputed house. <sup>29</sup>	<i>Berdasarkan surat keputusan-keputusan desa dan surat pernyataan dari pihak masing-masing yang bersangkutan dalam hal jual beli atas rumah yang disengketakan.</i>
On the basis of the <i>adat</i> decision of 12 October 1997 which is binding and imposes responsibility, we expressly clarify that upon receiving this letter all building and construction work on your house that stands on the plot that already has a legal owner as based on the decision of the <i>adat</i> gathering must end.	<i>Atas dasar keputusan adat tanggal 12 Oktober 1997 dianggap syah dan bertanggung jawab, untuk ini kami dengan tegas menyatakan agar setelah menerima surat ini agar megentikan kegiatan membangun atau mendirikan rumah saudara diatas kapling yang sudah ada pemilik yang syah berdasarkan keputusan sidang adat.</i>
In order that you understand and effectuate [the above], we thank you for your attention.	<i>Demikian untuk saudara ketahui dan laksanakan, atas perhatiannya diucapkan terimah kasih.</i>

In addition to this letter, four days later Alosius Kakuh received a letter from the sub-district head written on the request of the paramount *adat* leader, containing identical instructions to stop building and to heed the decision reached in the earlier *adat* session. Yet neither party was satisfied. Alosius Kakuh felt that he had not received his money's and buffalo's worth, while Paulus Prapat started to feel uneasy over the NLA certificate for the land issued to Muasa Meti. Alosius Kakuh was the first to take action. He went to see Yudin Aleng to get him to sign a document stating that their agreement had included the land and crops as well as the house. Aleng did not take this lightly and reported to the *adat* council. The report of the paramount *adat* leader on the matter reads:

Today 15 March 1999 in the house of Darius Riung we have carried out research regarding the truth of the problem of the sale of a house and its boundaries located in Long Bawan, between the selling party Yulan Aleng and the buying party Alosius Kakuh.	<i>Pada hari senin tanggal lima belas bulan Maret tahun seribu sebAleng ratus sebAleng puluh sem-bAleng, bertempat di rumah saudara Darius Riung kami telah mengadakan penyelidikan tentang kebenaran masalah jual beli sebuah rumah dan perbatasan dilokasi Long Bawan antara pihak penjual Yulius Aleng dan pihak pembeli Alosius Kakuh.</i>
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<sup>29</sup> Reference is made to the authority of the twelve members of the *adat* council that reached the decision of 12 October 1997.

Based on the statement of Yulius Aleng, it is correct that he sold just the house to Alosius Kakuh, while the land on which the house bordered was the property of Paulus Prapat. [Yulius Aleng's statement:] If there is a document produced by Alosius Kakuh of which the contents declare that I sold the bordering land, it is wrong or false. My wife was witness at the time he asked me to thumb-print [a document] of which I did not know the contents [as] I am illiterate. Together we requested that the contents of the document be clarified while my wife boiled water to make tea for him, but Alosius Kakuh immediately departed. This is the statement of Yulius Aleng as made before these community prominents, a list of those present is included.	<i>Berdasarkan pernyataan saudara Yulius Aleng, benar dia ada menjual rumah saja kepada Alosius Kakuh, sedangkan tanah perbatasan tempat rumah ini milik Paulus Prapat. Kalau ada surat dibuat saudara Alosius Kakuh yang isinya mengatakan perbatasan saya jual, itu salah atau bohong. Isteri saya ini juga saksi sewaktu dia minta saya cap jempol surat yang tidak saya tahu isinya/saya buta huruf. Kami dua minta agar isi surat tersebut dijelaskan sambil isteri saya ini membuat air the untuk dia, namun saudara Alosius Kakuh ini langsung pulang. Inilah pernyataan saudara Yulius Aleng didepan tokoh masyarakat/daftar hadir terlampir.</i>
Thus is our report which we drafted according to the truth.	<i>Demikian berita acara ini kami buat dengan benar.</i>

Paulus Prapat did not await events either. He approached Muasa Meti and, in private deliberation, got him to agree to sign a document of ownership (*surat kuasa*) in which Meti handed over full and unreserved ownership rights of the NLA certificate in his name to Paulus Prapat. Citing the original 1988 agreement between Yulius Aleng and Alosius Kakuh as well as the decision of the October 1997 *adat* gathering, the document specified that the transferred ownership rights did not refer to the house built on the land. It is of notice that whereas the original typed text of the October 1997 decision states this is accepted by the paramount *adat* leader of Krayan Darat, a copy has been added here in which this has been crossed out manually and filled in again as an *adat* decision of Liang Biadung: a 78-people village at the Terang Baru location. That change would be a considerable reduction of the decision's authority and appeared to give voice to disagreement with the state of the claim. We can only guess at the identity of the person who vented his feelings in this way but the subsequent affairs may serve as indications.<sup>30</sup>

## Forcing a settlement

As neither party was willing to give in and both were flaunting the instructions of *adat* leaders and village heads alike, these embarrassed authorities decided they had had enough. The case was referred to the sub-district head of Krayan.<sup>31</sup> He

<sup>30</sup> We can only guess this as nobody admitted to having inserted the alteration, but the following account of events was quite common. The paramount *adat* head only arrived towards the end of the October 1997 meeting, which up until then was chaired by the village *adat* head of Liang Biadung. The village *adat* head informed the paramount *adat* head of their progress and the paramount *adat* head immediately agreed to the decisions whereas, so the argument goes, he would not have done so if he had been informed of all details. Hence various people, among them Paulus Prapat, argue that the decision cannot really be said to have been taken by the paramount *adat* head, and that its lack of balance and insight require a reconsideration.

<sup>31</sup> In the pre-reformation years the district government occasionally positioned itself as the only and absolute authority in Krayan. On occasion difficult and embarrassing *adat* cases were done away with by referring them to the district government on these grounds. Around the time of this specific case discontent had grown with the performance and behaviour of the paramount *adat* head of Krayan Darat and the local *adat* structure was experiencing a temporary crisis of authority. Referring the case to the sub-district head thus also allowed for some space and time to reorganize.

was asked to come to a verdict in close deliberation with the village head of Long Bawan and the paramount *adat* head of Krayan Darat. The meeting had place in April 2000 and resulted in the following ruling:

Decision/Agreement regarding the borders of land and a house between Paulus Prapat (Yulius Aleng), Muasa Meti (Yulius Aleng) and the Rev. Alosius Kakuh.	<i>Surat keputusan/kesepakatan tentang watas tanah/bangunan rumah antara sdr Paulus Prapat (Yulius Aleng), Muasa Meti (Yulius Aleng) dan Pdt. Alosius Kakuh.</i>
Examining several suggestions and considerations by the participants of a meeting related to the problem of the borders of sold land between Yulius Aleng (Paulus Prapat, Muasa Meti) and the Rev. Alosius Kakuh, the location of the land/building being in the village of Long Bawan.	<i>Menanggapi beberapa Merryin serta pertimbangan-pertimbangan oleh peserta pertemuan yang menyangkut masalah jual beli watas tanah antara sdr. Yulius Aleng (Paulus Prapat, Muasa Meti) dengan Pdt. Alosius Kakuh, yang lokasi tanah/bangunannya terletak di desa Long Bawan.</i>
Based on several suggestions and or considerations as mentioned above, each of us involved agreed unanimously that:	<i>Berdasarkan dengan beberapa Merryin dan atau pertimbangan sebagaimana tersebut diatas, maka dengan ini kami masing-masing bersangkutan telah menyetujui dan sepakat bahwa:</i>
1) The land remains the property of Paulus Prapat	1) <i>Watas tanah tetap menjadi hak milik saudara Paulus Prapat.</i>
2) Yulius Aleng must return one female buffalo which has calved between one and four times to the Rev. Alosius Kakuh or pay \$ 1,200 (twelve hundred Malaysian ringgit) with an exchange course of Rp. 1,800 times \$ 1,200 gives Rp. 2,160,000.-	2) <i>Saudara Yulius Aleng harus mengembalikan satu ekor kerbau betina yang kira-kira 1 s/d 4 kali beranak kepada Bpk. Pdt. Alosius Kakuh atau diperkirakan seharga \$ 1.200 (seribu dua ratus ringgit) dengan kurs/tukaran Rp. 1.800 x \$ 1.200 = Rp. 2.160.000,-.</i>
3) Alosius Kakuh must return the land to Paulus Prapat, the actual building/house to Yulius Aleng with the annotation that the zinc roofing that was installed will be taken back by mr. The Rev. Alosius Kakuh or reimbursed by Yulius Aleng.	3) <i>Saudara Alosius Kakuh bersedia mengembalikan watas tanah kepada saudara Paulus Prapat, bangunan fisik/rumah tetap kepada sdr. Yulius Aleng dengan catatan atap seng yang terpasang akan diambil kembali oleh Bapdt. Alosius Kakuh dan atau diganti oleh sdr. Yulius Aleng.</i>
4) The time limit for payment/settlement of the buffalo/money by Yulius Aleng to the Rev. Alosius Kakuh is 11 July 2000 at the latest following the date of this decision, the system of realising the payment by party Yulius Aleng is through mr. Paulus Prapat and mr. Muasa Meti.	4) <i>Batas waktu pembayaran/pengembalian kerbau/uang dari sdr. Yulius Aleng kepada Pdt. Alosius Kakuh selambat-lambatnya pada tanggal 11 Juli 2000 terhitung sejak tanggal keputusan ini, yang sistim realisasi/penyelesaiannya kepada pihak sdr. Yulius Aleng adalah melalui Bpk. Paulus Prapat dan Bpk. Muasa Meti.</i>
5) If [the above] is not executed in accordance with the set time limit a fine according to the prevailing regulations will be applied.	5) <i>Apabila tidak terpenuhi sesuai dengan batas waktu yang telah ditetapkan akan dikenakan denda sesuai dengan ketentuan yang berlaku.</i>
Thus this decision/agreement has been correctly drawn up based on the agreement of each of us to make it the base of how things should be- together it was signed by each of us involved without influencing of any party whatsoever.	<i>Demikian surat keputusan/kesepakatan ini dibuat dengan benar atas dasar persetujuan kami masing-masing untuk dijadikan bahan sebagaimana mestinya- serta ditandatangani oleh kami masing-masing yang bersangkutan dengan tidak dipengaruhi oleh pihak manapun juga.</i>

The undersigned fell apart in three groups. Paulus Prapat, Muasa Meti and Alosius Kakuh were listed as “we who made the statement/decision.”<sup>32</sup> Prapat and Meti’s names are both followed by a slash and the name of Yulius Aleng, thus implying that they spoke for him as well. Prapat, Meti and Kakuh have all signed in agreement behind their names. Aleng’s thumbprint is nowhere to be seen. The next category is five participants of the meeting: four village heads or village-level adat leaders and the paramount adat head of Krayan Darat. All have signed the document. Finally, the sub-district head has signed and stamped the document, thus officially consenting to its contents. Essentially the decision proposed a return to the state of affairs before the first sale in 1988. All were returned what they had paid or sold and the entire case was annulled.

A curious detail was the absence of Yulius Aleng’s print. Aleng’s reputation suffered following his 1999 statement to the paramount adat head that Alosius Kakuh had wanted him to sign a document without explaining its contents. Kakuh vehemently denied and blackened Aleng’s name. As an illiterate farmer his word did not hold up to that of Alosius Kakuh, an educated man and a respected minister of irreproachable conduct. Parties hence agreed that Aleng’s presence at the meeting would be unnecessary and both Prapat and Meti could act as his deputies. It seemed unlikely, however, that Aleng himself would easily agree to the meeting’s outcome. After providing the financial equivalent of an expensive pig for the 1997 adat reconciliation ceremony, it was again Aleng who had to reach into his pocket, and he proved unwilling to accept.

Whether Aleng no longer possessed any buffalo or simply refused to pay remains unclear, but he stood little to gain. Alosius Kakuh had made elaborate alterations to the house and as Aleng was unable to reimburse these Kakuh would literally have to take the house apart in order to approach its original condition. Unwilling to end up with no buffalo and no house Aleng made no reimbursements whatsoever. Because of this Kakuh refused to vacate the house and the process once again came to a standstill. Paulus Prapat, wishing to have the use of the land, then decided that he would look into Kakuh’s reimbursement himself. On 6th May Prapat and Kakuh met with Muasa Meti and reached a verbal agreement that Meti would provide Kakuh with the buffalo that Aleng was unwilling to deliver. Yet it soon transpired that Meti had had second thoughts about making the payment. Why he agreed in the first place remains unclear. An explanation might be that a combined visit by Kakuh and Prapat put pressure on Meti to agree, but that he composed himself afterwards.

A wedding present

In the meantime things were about to take another turn that would complicate matters even further. Anticipating a much faster settlement of the case, Prapat had given the land to one of his sons, Ishak Paulus, at the occasion of Ishak’s wedding some years earlier. Now Ishak and his wife wanted to build their own house on the land. By the end of May 2003 Ishak sent Alosius Kakuh the following letter:

32 Kami yang membuat pernyataan/keputusan.

Announcement!	Pemberitahuan!
This is to notify Alosius P. that soon, in the month of June of this year 2003, I will use or egalise the land that your house in Long Bawan stands on. <sup>33</sup> [I will do this] because my land has been confiscated for several years and my program to build a house on the aforementioned land could each year not take place because your aforementioned house blocked it.	Untuk diketahui om Alosius P bahwa sebentar pada bulan juni tahun 2003 ini, tanah tempat rumah om yang di Long Bawan itu akan saya pakai atau diratakan tanahnya. Karena mengingat tanah saya tersita dalam beberapa tahun dan program saya mendirikan rumah pada tanah tersebut tidak jadi tiap tahun karena terhalang dengan rumahnya om tersebut.
Hence I request your awareness to move or demolish your house at the earliest possible opportunity after receiving this letter.	Maka dengan itu saya mohon kesadarannya untuk memindahkan atau membongkar rumahnya dalam waktu yang secepatnya setelah menerima surat ini.
[Hence the reason for] this letter of notification and I thank you for your benevolent participation in this matter.	Demikianlah surat pemberitahuan dan atas partisipasi yang baik dalam hal ini saya ucapkan terima kasih.

Kakuh kept his cool and did nothing. Making a point of waiting until autumn, he had a meeting with Paulus Prapat on the issue on the first of October. They reached an agreement which they wrote down and which they themselves and two witnesses signed in confirmation:

Today, Thursday 1 October 2003 has been agreed by the two parties:	
1. Paulus Prapat (called first party)	
2. Alosius Kakuh (called second party)	
We individual parties agree as follows:	Kami masing-masing pihak bersepakat sebagai berikut:
1) The first party has promised to settle as decided with a time limit of 15 October 2003.	1) Oleh pihak pertama telah menyanggupi untuk melunagi seperti keputusan dengan batas waktu pada tanggal 15 Oktober 2003.
2) The second party has accepted the wish of the first party to settle within the time limit of 15 October 2003.	2) Oleh pihak kedua telah menerima keinginan pihak pertama dengan batas waktu sampai dengan tanggal 15 Oktober 2003 telah dilunasi.
3) The first party will immediately report to the government before 15 October 2003 when the buffalo that will be given has become available in accordance with communal agreement.	3) Oleh pihak pertama segera melaporkan kepada pihak pemerintah sebelum tanggal 15 Oktober 2003 setelah kerbau yang akan diberikan sudah ada sesuai dengan musyawarah mufakat.
4) Muasa Meti shall soon hand over the buffalo to Alosius Kakuh in accordance with the agreement of 6 May 2003.	4) Sdr. Muasa Meti segera menyerahkan kerbaunya kepada Sdr. Alosius Kakuh sesuai kesepakatan pada tanggal 6 Mei 2003.

Prapat thus agreed to provide the buffalo due to Alosius Kakuh, who had not budged under Ishak’s or Prapat’s demands. The parties agreed upon a time limit

33 ‘Diratakan’ may also be translated as ‘to raze to the ground.’ In line with the relatively polite tone of the letter I chose to use the more modest ‘egalise’.



but included an unusual factor in point four: a reference to Muasa Meti. The formulation did not make clear whether Prapat expected to be able to convince Meti to give a buffalo to Kakuh or whether Meti was mainly supposed to take care of delivering a buffalo provided by Prapat to Kakuh. The text makes it clear, however, that it was important that it was Meti who would deliver the buffalo.

The undetermined buffalo

With one thing and another, Meti did not deliver the buffalo. On 19th October 2003 the adat authorities of Liang Biadung, where both Kakuh and Prapat lived, sent the following letter to the sub-district head:

To the honourable sub-district head of Krayan In Long Bawan	Kepada Yth: BaCamat Krayan Di: Long Bawan
With regard to the case between mr Paulus Prapat and mr Alosius Kakuh, of which you already know that the first party will pay the second party one buffalo in accordance with the decision and agreement of the two parties.	<i>Sehubungan dengan kasus antara BaPaulus Prapat dengan BaAlosius Kakuh, sebagaimana yang sudah Baketahui bahwa pihak pertama akan membayar kepada pihak kedua sebanyak 1 ekor kerbau sesuai dengan keputusan dan kesepakatan kedua belah pihak.</i>
On Sunday 19 October 2003, the first party has requested the apparatus of the village of Liang Biadung to hand over the aforementioned buffalo to the second party. The second party was not willing to receive the aforementioned buffalo with the following arguments:	<i>Pada hari minggu tanggal 19-10-2003, pihak pertama telah memohon kepada aparat desa Liang Biadung untuk menyerakan kerbau tersebut kepada pihak kedua. Jadi pihak kedua tidak bersedia menerima kerbau tersebut dengan alasan sebagai berikut:</i>
1) The time limit agreed upon had expired.	<i>1) Masa waktu yang ditentukan sudah lewat.</i>
2) [A decision of] the sub-district head is awaited.	<i>2) Menunggu bacamat.</i>
In accordance with the issues aforementioned in the above, we the village government of Liang Biadung request a decision of the sub-district head.	<i>Sesuai dengan hal yang tersebut diatas, maka dari kami pemerintah desa Liang Biadung memohon pertimbangan dari bacamat.</i>
Thus we have drawn up this letter to inform you as is our task.	<i>Demikian surat ini kami buat untuk baketahui sebagaimana mestinya.</i>

I was given several reasons as to why Alosius Kakuh refused to accept the buffalo and end the case. First, the fact that it was not Muasa Meti, Paulus Prapat’s family member, that delivered the buffalo, had Prapat’s family sneaking out of its obligation to publicly pay tribute to Kakuh. Moreover, the government status of Meti’s replacements was explained as a blatant attempt to pressurize Kakuh into accepting this absence of recognition of a customary duty. A second line of reasoning had it that the buffalo did not meet the required standards: it was too old, crippled, or otherwise deemed unsuitable to meet the demands set in the April 2000 agreement supervised by the sub-district head. A third argument, which my informants deemed made most sense, considered Kakuh to continue the calm negotiation he had already shown himself to be capable of. Kakuh intended to get the most out of the situation and used the elapsed time limit to up the payment by asking the sub-district head to review the situation once again.

Final settlement

Yet Serfianus, the sub-district head, had had more than enough. He had an official summoning delivered to Kakuh and Prapat to appear before him on the morning of 23rd October 2003, along with the informal message that he was well fed up with their squabbling and would see to it that the issue was settled once and for all.

Both parties feared they would lose out. Kakuh feared he would receive no payment whatsoever while Prapat feared that the payment would be increased to force him into complying. Word reached them that Krayan Darat’s adat authorities had also been called upon to attend and the character and weight of the meeting made the two decide to take no risks and settle things themselves. Kakuh accepted the buffalo that Prapat had offered on the 19th, and together the two newly reconciliated adversaries visited the sub-district head on the 22nd of October to announce their settlement. The sub-district head saw no reason to disagree and cancelled the meeting called for the 23rd, sending out notice to the various adat heads.

More than the two preceding cases, this case is an example of the relative lack of enforcement of adat decisions. It is assumed that the pressure of society will force offenders to comply, but if offenders hold a strong social position themselves they are well placed to withstand such pressure. This case is a strong example of individuals sufficiently well-placed to ignore authorities and engage in forum shopping in what grows into a feud of considerable proportions. It thus uncovers a weak point in the authority of adat; if decisions are not acted upon the one means of enforcement available is to call upon the official authorities, notably the police, but that would be equal to admitting a lack of enforcing authority and is thus not done by adat heads. Moreover, both Alosius Kakuh and Paulus Prapat are members of Krayan Darat’s elite, as are the adat leaders. Some respondents in Krayan suggested that elitism plays a role in adat as much as in official government. The lack of enforcement that characterised this case, as well as the various orders for the weakest person, the illiterate farmer Yulius Aleng, to pay, could well be seen as proof of that.

The cases discussed in this paragraph show that the practice of settling land conflicts in Krayan is a dynamic and imaginative affair. A more or less fixed trajectory exists in the shape of the various levels of adat authority, but as the cases above make clear, deviation is not uncommon. The immediate problem is one of enforcement: adat authorities have few actual means – apart from social sanctions – at their disposal. Hence the matter of actual social authority comes to the fore. In general the population of Krayan acknowledges and supports the authority of the adat apparatus as it is through these leaders that their claim to a customary territory is maintained vis-à-vis the rest of the nation. On an individual basis, however, individuals with a sufficiently strong social position, or sufficient backing against a decision perceived as unjust, may decide to passively oppose adat decisions by carrying them out only in part, or not at all, and voice their disagreement. For the status of adat and its leaders it is of utmost importance that decisions are carried out. If not, a case might be delayed for years and formal government authorities might become involved, but adat authorities will see the case brought to an end. Prestige and credibility require no less of them.

#### 6.4.4 Testing the limits of *adat*'s authority

Although the relations between adat and government authority have de facto been stabilized by a division of responsibilities for daily governance, this does not mean that Krayan's administration is devoid of dynamism. News of developments in greater society reaches the mountains, and individual authorities use its effects in seeking to expand their powers in daily governance. Competition over authority is not uncommon, and sometimes results in an overt contest in which the differences between adat and government authority are emphasized to profile the instigators. Such actions are usually instigated by individuals who are up and coming in Krayan's power hierarchy and often incur the chagrin of others whose positions are best served by the present division of authorities. Yet those whose authority is well established occasionally revert to such actions as well: challenging the authority of others emphasizes one's own position and if conducted properly, attains considerable popular attention.

This section offers a brief description of one such power struggle and its effects for some of those in Krayan's governance structure. The paramount adat leader of Krayan Hilir substantiated his authority by referring to district legislation pertaining to adat land, even though the conflict had nothing to do with land. The case vividly illustrates the less-than-absolute character of Krayan's government structure and the dynamism with which individuals use ambiguities in the division of power to find niches applicable to furthering their interests.

Krayan's adat leaders maintain that all those present in Krayan are subject to adat authority. The books of Krayan Darat and Krayan Hilir contain written rules to this point. Serfianus, the sub-district head, strongly opposes this point as he fears that it will bring adat heads into conflict with national authorities on a level beyond his control. Nonetheless, adat leaders occasionally refer to these rules in challenging formal authorities. Emboldened by the 2004 district government recognition of the Lundayeh as masyarakat adat (see chapter 10), the paramount adat head of Krayan Hilir decided to risk a disrupted relation with the sub-district head and highlight his authority vis-à-vis the army and police. He had no pressing need to do so as his authority in Krayan Hilir was unchallenged at the time, but rumours existed that elements among Krayan Hilir's population were in favour of an elected paramount adat head such as there was in Krayan Darat. Although not against elections in principle, Krayan Hilir's paramount adat head felt that those could best be instituted after he retired from the position of his own accord. Well into his 60s, he hoped to continue for a few years yet. Challenging the state authorities allowed him to charismatically display his prowess and adat knowledge, and made him a popular embodiment of Krayan's otonomi adat.

#### Implementing adat law outside the community

Late one night in February 2005 two soldiers, Suwardi and Yansa, had been drinking in a local bar in Long Bawan. On their way back to their quarters they came across a drunken Lundayeh named Yulius Asa who was making a nuisance of himself. The soldiers wanted to arrest the man for unruly behaviour, but he resisted.

The ensuing fight involved considerable bloodshed. Yulius Asa applied part of the roof of a shack at hand to the fight, taking out an eye of one of the soldiers, while the soldiers beat the man up so severely that he was in danger of his life and had to be evacuated by aeroplane to a hospital at the coast. A wave of shock went through Krayan and brought an angry mob threatening to torch military and police headquarters in Long Bawan. Sub-district and local adat authorities managed to keep them back, but the situation was very tense. The evacuated Lundayeh originated from a village in Krayan Hilir, and its paramount adat leader and adat council arrived late the following day. They immediately engaged in a deliberation to decide matters and restore calm. After hearing witnesses, among them local police, the adat council presented the military commander with the following decision:

1) The sanction for beating up mr. Yulius Asa ([by] Suwardi and Yansa) is three female buffalo which have already calved, one pig of six kilan for a reconciliation ceremony and a role of bandage to dress the victim's wounds.	1) <i>Sangsi terhadap pemukulan BaYulius Asa (Suwardi dan Yansa) adalah tiga ekor kerbau betina yang telah beranak dan satu ekor babi enam kilan untuk perdamaian, kain untuk pembalut luka satu bal.</i>
2) If the victim (Yulius Asa) suffers permanent injuries the accused (Suwardi and Yansa) will be fined seven adult female buffaloes which have already calved.	2) <i>Apabila sikorban (Yulius Asa) mengalami cacat tetap maka siterdakwa (Suwardi dan Yansa) dikenakan denda tujuh ekorkerbau betina yang telah beranak.</i>
3) The expenses of the victim until his full recovery are the responsibility of the accused, including his transportation (Long Bawan-Tarakan).	3) <i>Biayah sikorban sambai sembuh total ditanggung oleh terdakwa termasuk transportasi pulang pergi (Long Bawan-Tarakan).</i>
4) In case the victim dies, the accused party will be fined ten female buffalo which have already calved.	4) <i>Apabila korban meninggal dunia pihak terdakwa dikenakan sepuluh ekor kerbau betina yang telah beranak.</i>
5) Yulius Asa is fined one female buffalo which has already calved, one pig of five kilan for reconciliation and a role of bandage.	5) <i>Yulius Asa dikenakan denda satu ekor kerbau betina yang telah beranak, babi satu ekor lima kilan untuk perdamaian, kain pembalut satu bal.</i>
6) If a future problem occurs which disadvantages either of the parties action will be taken in accordance with the valid adat law.	6) <i>Apabila kemudian hari terdapat suatu masalah yang merugikan masing-masing pihak akan diambil tindakan sesuai dengan hukum adat yang berlaku.</i>
7) Ten percent of the nominal total of the fines will be deducted for the administration of the adat council.	7) <i>Sepuluh persen dari jumlah nominal denda ditarik untuk administrasi lembaga adat.</i>
8) Thus we justly took this decision of the adat gathering and observed its correct application.	8) <i>Demikian keputusan sidang adat ini kami buat dengan benar dan dapat diindahkan sebagai mestinya.</i>

As expected, the sub-district head was very displeased. Yet Krayan Hilir's paramount *adat* head ensured the support of his younger brother, a member of

Nunukan's district parliament, and thus secured protection for himself and the sub-district head against reactions from district authorities. The tense atmosphere and imminent violence meant that the local military commander initially agreed to honour the fine. A sum of several hundred thousand rupiahs was paid to Yulius Asa's family as a first instalment, while he was carried by military transport plane to a military hospital at the coast. The two soldiers, one of whom was seriously injured as well, were put on the same aeroplane and immediately transferred out of Krayan.

Several days later an officer of East Kalimantan's regional headquarters arrived in Long Bawan to discuss matters with the *adat* authorities. The officer expressed his regret over events and his concern with the size of the fine. It was agreed that military doctors would treat Yulius Asa and that he would return to Krayan by military transport as soon as he was fit enough. The fines would be discussed at a later date, for which the *adat* authorities would travel to the regional military headquarters in the coastal city of Tarakan. As I was discussing the case in early 2006, almost a year later, it transpired that none of the *adat* leaders had found the time to travel to the coast to settle matters.

Subjecting and sentencing soldiers of the national army according to local *adat* went squarely against the explicit desires of the sub-district head and had no basis in national law whatsoever. The *adat* decision itself was not undisputed either. As Krayan Darat's paramount *adat* leader pointed out to me, the fines set were exceptionally heavy. The relevant rules in Krayan Hilir's *adat* book mention single pigs as fines, but buffalo do not feature. Krayan Hilir's paramount *adat* head explained that, since the perpetrators were members of the national armed forces, they should know better than to beat a person close to death, and that the fines were intended to instil respect for Krayan's *adat* in the military. Yet Krayan's sub-district head, possessing a copy of the *adat* rules book as well, pointed out that the balance between the fines of the two parties seemed to indicate that the Lundayeh had not drawn blood and was a passive victim. He had, however, taken out a soldier's eye: hardly a bloodless affair and his fine should hence have been higher. The fining of the soldiers did not serve the purpose of punishing culprits – it served to force government authorities to show respect for Krayan's *adat*. The exceptionally high fines were not intended as absolute. They were meant to show defiance and acted as an 'opening bid' to which the authorities could react. The officer who travelled to Krayan realised this: his offer to discuss settlement of the remaining debt at the regional military headquarters was a polite formulation of a refusal to pay more. Krayan Hilir's paramount *adat* head is not likely to risk his reputation by travelling to the coast only to be turned down and made to return empty handed. It is very likely that no more will come of the affair, as it has served its goal. Government authority has been challenged by *adat*, and it heeded the decision taken by the local *adat* leaders by making some payment and providing medical care for Yulius Asa. Even though Krayan Hilir's paramount *adat* leader squarely contravened the cooperative and conciliatory political course of the sub-district head, events popularly profiled the *adat* head as a strong and independent leader who had the interests of the Lundayeh close at heart.

## 6.5 Concluding remarks

In Krayan, access to land is one aspect of an intense and continuing division of authority between sub-district level government officials and *adat* leaders. There can be no doubt that Krayan's remote location as an 'out-of-the-way' place has been a key issue in establishing this unusual position, but contacts with the outside world have been –and still are– essential to its creation and continued existence as well. Whereas locally the sheer numeral ratio between Lundayeh and government representatives as well as the latter's 'hands-off' stance are important practical reasons, the successful maintenance of the Lundayeh *otonomi adat* is caused by other, more remote factors, many of which have become strategic resources. As in Paser, goals and strategies vary with the level of analysis; If we look at the relation between Krayan and the rest of Nunukan or, even more abstract, the Indonesian state, findings are different from those encountered when the focus is on events and relations within Krayan. How can these be explained, and what do they mean for the research?

### Goals and resources

If we use Bailey's formula of  $S = f(G, R, C)$  –strategy is a function of the specific goals, resources and constraints that was introduced on page 19, the variables take on the following meaning for the relation Krayan-Indonesian state. The goal is optimized local autonomy, the resources are the Lundayeh's inroads into the imagery of the Indonesian state and the constraints are the ultimate authority of the nation's government. The strategy followed is one in which the Lundayeh emphasize their position within the state and their commitment as its citizens. The large number of Lundayeh military veterans and the transparency and fairness of Lundayeh *adat* as an unadulterated archetype of the national concept of *adat* (just and devoted to the greater whole rather than to the individual) are rewarding approaches for this. A less advertised but more important resource is the level of education among the Lundayeh. The fact that there are Lundayeh government officials and members of regional parliament, within the ranks of the competing authority, makes for a strategic resource that cannot be underestimated. A less evident factor that runs the risk of being overlooked is the lack of a particular constraint; the population is almost completely Lundayeh and there are no large companies operating or claiming rights in the area. The absence of a history of conflict over land with others make that the Lundayeh claim is virtually unopposed in society. A highly important strategic advantage.

If the focus is shifted to the lower level of governance within Krayan, it becomes clear that although the division of authorities between the government and *adat* heads is functional, it is not free of tensions. Application of Bailey's formula is more problematic here, as the goals of the respective power brokers are not fully similar and competition hence complex. Whereas the *adat* heads strive for safeguarding the independence and prominence of Lundayeh *adat* and hence of their own position, the sub-district head disputes this only to a limited extent as his ambitions are not in Krayan, but in the government apparatus outside of it. The common goal

of the *adat* heads and the sub-district head thus lies in maintaining a peaceful society that may serve as an example of fruitful cooperation between *adat* and official government to the rest of the nation.

Moving to a level lower of abstraction, to the workings of the *adat* system in Krayan, it becomes clear that *adat* heads themselves have little immediate gain from their position apart from social status. What is more, the recent demand for transparent and responsible decisions that are scrutinized and –where this is felt necessary– criticized by the population make that the position of *adat* head in Krayan may well develop into one where decisions are monitored as thoroughly as is the case with the official administration of justice. The drawing up of *adat* books by the paramount *adat* leaders is certainly a move towards official procedures and the institution of accountability by which the *adat* authorities could very well subject themselves to the scrutiny and evaluation of society. It could be a matter of time before the first Lundayeh *adat* lawyer pays his respects.

### The domain of *adat*

An essential point in all of this is whether Lundayeh *adat* as presented in the *adat* books can be considered as having the same consistency as official law. In paragraph 6.2. I questioned the consistency of the rules, as they allow considerable space for diverse interpretation in establishing fines for ostensibly the same offence. Nonetheless this can be a noted evil in official legislation as well and it usually takes the development of jurisprudence to remedy this situation. It hence depends on the consistency of the *adat* decisions whether the parallel with official law can be legitimized beyond outward presentations and procedures. Insofar as this matter can be judged here, it appears that the respective paramount *adat* leaders are making a concerted effort at furthering the credibility of their decisions and emphasizing its source in *adat*. If the *adat* authorities are able to maintain the approval of the government and the support of the local population, their position is secure.

The definition of *adat* and the legitimation of those applying it are however problematic issues. As the ‘shadow council’ of Fairy Palung shows, there is no authority that individual *adat* heads can revert to if someone else disputes or even takes over their position. Opposition has to come from society as a whole and when it is lacking the *adat* leaders are relatively powerless. This is illustrated especially by the last case discussed in paragraph 4 of this chapter, in which compliance is eventually only enforced after involvement of the official authorities. The domain of *adat* authority vis-à-vis official law thus is determined in actual meetings of the two systems and prone to adaptation where this is deemed necessary, or possible. The continued relevance of *adat* depends upon the range of its autonomy. For individual *adat* heads maintenance and expansion of this range hence is of vital importance. The relatively aggressive move of the paramount *adat* head of Krayan Hilir to fine two soldiers and incur the displeasure of the district head should be seen in this light. *Adat* and its authorities need to distinguish themselves from official law and its representatives and challenge their position. If they fail to do so with a certain regularity, their visibility –and hence their position– can enter dire straits.

### Relations of authority

Maintaining a functional working relationship with the sub-district government that goes as far as including a division of tasks has proven to be a highly successful strategy. Even though the Lundayeh live in an ‘out-of-the-way’ place that is remote from the district government, the sub-district authorities, police and army are a permanent presence in the heart of Krayan. *Adat* autonomy hence cannot exist without the involvement of these potential rivals in one way or another and peaceful coexistence has proven its effectiveness in this field. Lundayeh leaders hence seek to maintain a balance that emphasizes *adat* autonomy and Lundayeh identity as well as Indonesian citizenship. They have things to lose as well as to gain and hence choose their presentation with care. The Lundayeh emphasize their *masyarakat adat* identity; their continued adherence to *adat* and the rights to their ancestral lands that they derive from it. They do not, however, engage with *masyarakat adat* NGOs or related activism. *Adat* identity is limited to the own group, and the success the Lundayeh have is not to be endangered by throwing in their lot with other communities.

The government-sanctioned control over *adat* land has no equivalent in East Kalimantan, and quite possibly not in Indonesia. The ‘low profile *masyarakat adat*’ strategy of the Lundayeh in combination with the resources available to this group thus provided a highly successful combination. In all probability the combination of power relations, identity politics and geographical location that allowed for this success is unique. Whether the same situation would work for other communities in Indonesia is by no means certain.





# The voices of the people 7

## NGO's and Ormas power

In most states and extensive legal systems control over land access is the exclusive domain of the government. Suharto's resignation caused a decrease of central state strength. This vacuum was exploited by non-government entities to claim and establish alternative authorities to the "changing continuities" (H. Schulte Nordholt, 2003:552) of the New Order's remains. Especially in the regions authorities manifested themselves that had little or nothing to do with the government, but that had their roots in local conditions. Many of these presented themselves as non-governmental organisations (NGOs), a concept that is not without problems in this context. The essence of the term –emphasizing the concept's civil society origin- is that such an organisation operates independently from government influence and occupies itself with furthering specific social interests, generally for the greater good of all. For a large number of organisations this is certainly the case. Organisations monitoring the legitimacy of government activities and policies are the condensation of an essential characteristic of the rule of law. As the government has the monopoly on defining, drafting, and applying law, the population has the right to control the government (see for instance Vibert, 2007). Other organisations, however, that champion the interest of specific groups and do not have the interest of society at large at heart may well be non-governmental, but their civil society qualities are questionable.

Governments have to decide upon policies in dealing with both types of organisations. Regimes championing the rule of law and transparency of government generally allow NGOs considerable space to operate, whereas regimes of a more totalitarian nature frequently limit or even prohibit such activities. During the New Order era, the Indonesian government kept a particularly tight rein on NGO activities (see Eldridge, 1994; Cleary, 1997:14-58). Law 8 of 1985 on Social Organisations (better known as the *Ormas* law) was the legal tool for this. This law stipulates that organisations not related to the government should be either 'social organisations' (*organisasi kemasyarakatan*) or 'mass organisations' (*organisasi massa*). The law contains definitions of such organisations' functions, rights and duties vis-à-vis the government, and thus limits their room for independent movement.<sup>1</sup> The *Ormas* Law ensured a considerable government control over these groups, but did not completely restrain their activities. On the margins of New order rule, non-governmental advocacy organisations feeling out the limits of governmental tolerance made themselves visible in defending the interests of -among others- peasants, labourers, indigenous peoples and the environment against those of 'the state' (cf. Ganie-Rochman, 2002; Molyneux, 2000). Such organisations were generally called 'independent social foundations' (*lembaga swadaya masyarakat*, LSM). Many

<sup>1</sup> Among others the law prescribed organisations' ideological orientation and the duty to request permission for foreign funding from the government, thus strongly limiting organisations' independence.

were founded with the intention of legitimately furthering specific general interests with the government, and whereas some aspired to maximum independence from the regime, such connections often proved to be unavoidable if a position of influence was to be obtained.

When *reformasi* begun and government control of popular criticism was seriously slackened, social interest groups mushroomed throughout the nation. Many new groups, notably the activist ones, eschewed the label of LSM because of such organisations' links to the New Order and instead opted for a literal translation of non-governmental organisation (*organisasi non-pemerintah*, or ORNOP). The denominator had two clear advantages. First, it defied association with the social and mass organisations and the LSM of the New Order era. Many of these had committed themselves to the regime in some way or another and, as I will show below, notably the caption of *Ormas* has more associations than the championing of civil rights alone. Second, organisations like the ORNOP are not mentioned in the *Ormas* Law. Some ORNOP members hence argued that the *Ormas* Law did not apply to them. For the government, this was a dangerous perspective. Whereas *Ormas* and LSM could be controlled through their ties to the regime, the ORNOP made a point of independence, thus becoming literal NGOs where intention and mode of operation are concerned. The government removed this legal shortcoming in 2001 by passing Law 16 of 2001, known as the *Yayasan* (foundation or organisation) Law. This law decrees that individual organisations can only operate legally after having received ministerial approval of their formation and gives local authorities the right to remove board members if 'general interest' requires it. Although I am not aware of local governments ever undertaking such action, the law potentially precludes such organisations from operating too independently. The furthering of land rights for poor or underrepresented land users is a major issue for NGOs throughout the world. In post-New Order Indonesia, organisations took it up with gusto.

The presence of especially *adat* organisations in Paser and Nunukan has come to the fore in the margins of the main themes of earlier chapters in this book. In this chapter I switch my perspective from what goes on in rural communities to how the authority of *adat* is mobilised in the regional centres of official government. In the preceding chapter on Krayan a certain amount of tension between *adat* and state authority has been problematised as an essential means for *adat* leaders of maintaining power. If *adat* would be fully similar to official law or in ideal harmony with it, what would be its continued reason for existence? As long as *adat* differs from official law, it needs to make its presence felt. Yet the leeway that this existential recalcitrance creates for *adat* is eyed enviously by others seeking social power. Unlike with government positions, the appropriation of *adat* authority is less subject to a system of check and balances and virtually anyone can call himself an expert. If competing *adat* leaders like Fairy Palung and Yagung Bangau can both claim authority, what is to stop others from doing so? In this chapter I discuss the activities, strategies and identities of several organisations in East Kalimantan that present themselves as either NGOs representing the interests of *adat* communities, or as more mobilised and pro-active groups defending the interests of those with *adat* land claims. In both instances discourses are strongly interwoven with the more general notions of land rights for the poor and the need for emancipation

of subsistence farmers, but the specific interpretation of these concepts has clear ethnic or indigenous demarcations. My interest in these groups and their activities lies not just with what they want, but also with how they argue it and whose support they have. Also, the manner of legal personality and circumventing the restrictions of the *Ormas* and *Yayasan* Laws are essential aspects. How, in short, do the activities of these groups influence and interact with the normative dimensions of access to land?

## 7.1 NGOs and local government

The New Order government approach to social organisations varied between stern pressure and relative tolerance, depending on activities and issues. The nineties, the final decade of the regime, saw a steady rise in activities, notably shortly before the end of the New Order when numerous groups expressed critical and vocal stances on such issues as corruption in the government (see Rasyid, 2003:70). Social organisations with highly diverse foci came into being throughout the nation. While some, like AMAN (see chapter 2), managed to establish themselves as national bodies, the majority operated locally as regional organisations. Their power and influence differ greatly, but it is clear that they enjoy much better opportunities now than during the New Order. Nonetheless, as Hadiwinata (2003:113-119) and Eldridge (2005) show, many organisations have to maintain the drive for reform in the face of conservative powers. In Indonesian society, organisations such as *Ormas*, LSM or ORNOP are not simply considered to be the 'good guys' representing the population. Evidence has shown that they are as prone to corruption as –for instance– government officials, and can be bought, be persuaded to change sides, or embezzle funds. It is to each individual organisation and its members to prove their merits to society.

The Regional Autonomy Revision Laws of 2004 greatly improved possibilities to do just that. As the regional head was henceforth to be elected directly by the region's population, district heads' focuses were shifted significantly from Jakarta to the local electorate. This brought regional affairs to the fore in local politics (Li, 2000; Duncan, 2007:726-727; Fitriani, Hofman and Kaiser, 2005), thus 'localizing' regional government and making regional affiliation a critical bonus –if not a requirement– for aspiring regional heads (for instance F. and K. von Benda-Beckmann, 2001). Candidates for the position have begun including references to local customs, ethnicity and religious values in their campaigning and emphasize their own attachments to the region. They need local support. Almost by default, candidates have to deal with insinuations of corruption which have become part of competing parties' political arsenals (cf. N. Schulte Nordholt, 2005).<sup>2</sup> No candidate emerges absolutely 'clean' from the campaigning period, so voices disproving such accusations are much needed. Local social organisations can play a prominent role in the election process, as their support –or opposition– can have considerable electoral

<sup>2</sup> Presents and promises are often dispensed to ensure votes, so allegations frequently are not entirely unfounded. See for discussions of regional elections for instance Vel (2005) on Sumba, Choi (2004) on Yogyakarta and (2007) on Riau, Buehler (2007) on South Sulawesi, Brown and Diprose (2007) on Central Sulawesi.



consequences. In turn, their role will gain them influence in local government. It is therefore quite common for social organisations to try and form an alliance with a district head candidate. For candidates, however, such an alliance brings obligations as well as a distinct set of associations that might pose an impediment to a candidate's stature in other contexts. Careful choices are important.

## Organisations and legality

Although many Indonesian activists consider ORNOP to be the Indonesian equivalent of the civil interest organisations that NGOs are, various other types of organisations claim similar standing as well. As discussed above, it was quite common during the New Order era for social organisations to be aligned to the regime in one way or another. Such alignments to elites or the government still exist in post-New Order organisations, giving many a questionable status regarding their objectivity and independence. Such civil society values are however not necessarily what people looking for a strong authority capable of protecting and furthering their interests, are looking for. Organisations' social power and political clout are far more important when push comes to shove. At the regional level, most vocal and influential groups are mass organisations (*Ormas*) with an inherently political nature and extensive groups of supporters/members. Cribb and Kahin (2004:263-264) point out that many such organisations emerged during the Indonesian revolution in alignment to specific parties for whom they were the first line of political, and sometimes physical, support. Control over the *Ormas* thus meant control over the activist wings of the nation's parties and factions, and that is what the *Ormas* Law aspired to achieve for the regime. The New Order had its own *Ormas* in the youth organisation *Pemuda Pancasila* (hereafter PP) a strong organisation existing on the verges of legitimacy and gangsterism with chapters in all regions and towns. Officially the youth wing of the government political party Golkar, PP gained notoriety for violence, rowdiness and extortion. PP was deployed in affairs where a regime crackdown was required, but army or police actions were unsuitable. The storming of the headquarters of Megawati Sukarnoputri's PDI in 1996, briefly discussed in chapter one, was carried out by PP and affiliated *Ormas* groups. Suharto's downfall threatened and considerably weakened the position of PP, but the organisation moved with the political flow and gained new patrons (Ryter, 1998). The various political parties established following *reformasi* took their cue from New Order – PP relations and established similar youth wings or security forces themselves. Depending on parties' spokespersons' outlooks these were either for 'protection against disturbances by hoodlums and miscreants', keeping the storming of PDI headquarters in mind, or for defence of the nation against 'dangerous elements', perhaps not so much unlike the orders given to the PP members storming the PDI building.

In reaction to regional unrests surrounding the end of the New Order regime, another type of organisation formed that combined elements of PP-style militancy with new local circumstances. These local civil militias (*milisi sipil*) claimed to provide justice and protection from outside threats for the local communities of which they are a part, as the state fails to do so (e.g. Acciaioli, 2001; Brown and Wilson,

2007; Bouvier and Smith, 2006; H. Schulte Nordholt, 2007; Van Klinken, 2005). In many cases, these militias associated themselves with the usage of violence; direct and physical, through agitation or through threats. However, where the New Order used the privatisation of violence and 'structural lawlessness' (Hüsken and De Jonge, 2002; Cribb, 2005) as part of its disciplinary apparatus to maintain control, the proliferation of local security groups meant that control no longer rested with one central authority or even with a specific group of competing elites within the nation. A strong threat of imminent violent contestation thus became manifest in regional society.

Whereas the *raison d'être* of such groups can well be understood in conflict areas, similar groups came into being in quiet areas as well, where they claimed to act as guardians of peace and security. Although some of these groups exist thanks to the patronage of established authorities (Asgart, 2004), others exist independently and beyond the control of the established elite. Headed by enigmatic leaders, these independent vigilante groups are in a position to become centres of social authority in their own right. For many of these groups the usage of violence is a tactical decision that has to be considered with care. Without the elite patronage that would protect them from the consequences if things backfired, they are highly dependent on social support for their actions. As such, these vigilantes are able to connect to the notions of civil society that underpin the existence of non-militant ORNOP activists. Independent from political parties, they are local political factors that are frequently beyond the control of established power brokers. If they manage to obtain social prominence, this independence can make their influence considerable. A tradition of local-level, occasionally violent vigilantism condoned by state authorities is part of Indonesian society (Colombijn, 2005; Colombijn and Lindblad, 2002). In many cases neighbourhood watches and local security groups were trained by the police, thus incorporating them, to a certain extent, in the government security system (Barker, 2001). The new vigilante organisations are not part of this system and sometimes openly defy its structure. Although such defiance is not new (cf. Barker, 2007:90-91) the weakening of the central state created new possibilities for these groups at the regional level. This has some important consequences: the boundaries between state and non-state authority, already blurred by the cooperation between police and security groups, become even vaguer as police and vigilantes, politicians and militias fade into each other. Whereas the unofficial strong arm of the state was made up of thousands or local organisations nationwide (Barker, 2007:90), the end of the New Order literally removed the reins that held them in place. The blurring of the boundaries between state and non-state authority gives rise to a situation in which state authority can be appropriated by non-state elements (see Gupta, 1995). This may lead to outright lawlessness and anarchy, but in the case of Indonesia Lund's (2006) concept of 'twilight institutions' is more appropriate. Operating in the shadowy zone between legality and illegality, non-state authorities exercise public authority in such a way that they are neither bound by law nor clearly transgressing it. Whereas the *Ormas* Law and *Yayasan* Law provide government authorities with legal tools to regain control, the functionality of especially the *Yayasan* Law can be questioned at the local level. Hardly any local organisation goes as far as to request ministerial

approval for its existence, nor do local officials risk a breach of friendly relations by asking for permits. That era has ended with the New Order. Moreover, many organisations now avoid the bindings of both laws by maintaining that they are neither mass organisations nor foundations but –for instance– adat organisations. They hence maintain –in a friendly, reasonable tone of voice– that these laws do not apply to them. As long as there is no call for open conflict, regional governments appear to accept such groups’ existence and tolerate their influence for the sake of cooperation. As such, these ‘civil vigilantes’ are reasonably acceptable partners to state authorities (e.g. Lynch, 2001; Henley, Schouten and Ulaen, 2007); they have social support, but often lack strong patrons and whereas they operate in defiance of the law, they are not immune to it. If a situation arises in which they are required to accost for themselves in terms of national law, legitimacy remains their weak spot.

## 7.2 Paser’s *adat* organisations: negotiating land and power

Paser has two major *adat* organisations, the LAP and the PBA (see chapter 4). Fierce competitors, the LAP and the PBA have a common relative in PeMa, a smaller *adat* organisation located in Long Ikis, at the foot of the Gunung Lumut mountain range. PeMa is the main vehicle of AMAN in Paser. PeMa’s leader is a school teacher originating from a well-respected and renowned lineage of local *adat* scholars. Together with the head of the PBA, a retired police officer with a passion for local *adat*, he formed the first *adat* organisation in Paser shortly after Suharto’s resignation. Both had attempted to set up *adat* councils before with the intention of giving a voice to Paserese complaints regarding land rights, but these consistently failed to gain the ear of the government. In 2000, a congress of Paserese *masyarakat adat* initiated by AMAN brought the two together and they decided to team up. It soon became apparent however that they could not agree on a course of action. The future PBA leader favoured a confrontational line, whereas the future head of PeMa preferred diplomacy and dialogue. After eleven months and much frustration the two therefore founded their separate organisations.

Basically they ignored each others’ existence. PeMa was active in and around Gunung Lumut while the PBA had its working area around Tanah Grogot. The organisations had quite different ambitions. PeMa consisted of a relatively informal board of four people who all held daytime jobs. PeMa had no membership or external funding and was interested in representing the Orang Paser *adat* community with the government rather than in claiming superior knowledge of Paserese *adat* or a leadership position therein. PeMa worked closely with AMAN, receiving suggestions and information from them. The PBA, on the other hand, maintained a strict hierarchical organisation, engaged in strategic contacts, and attracted a large membership. They did not maintain contacts with AMAN, whom they considered to be too soft in their approach. The PBA cultivated a self-acclaimed reputation in and

around Tanah Grogot as the highest *adat* authority in Paser and entered into collaborations with other pro-active *adat* organisations in East Kalimantan. Through these, the PBA came into contact with the Dayak movement and allied itself to them, thus placing emphasis on the Dayak element in Paserese culture. Among the largely Malayu society of Paser, emphasizing Dayak identity suggested a large and fearsome backing that went beyond the borders of the district.

Neither PeMa nor the PBA initially had access to the government. The district head had appointed the LAP as official government discussion partner regarding *adat* affairs. The only way to reach the government’s ear was through the LAP, whom PeMa reluctantly joined as a local chapter. The leaders of the LAP and PBA both characterize themselves as Paser’s main *adat* authorities and are regularly called upon by private parties to decide land conflicts. When in 2002 the new district of Penajam Paser Utara was established, both organisations made sure to set up local chapters there on the grounds that Penajam has a sizeable Paserese population. Expansion to the municipality of Balikpapan and the South Kalimantan districts to the south of Paser, both home to Paserese groups, are considered for the future.

### Defending *adat*: the PBA.

From 2000 onwards, the PBA took shape as an *adat* Paser organisation based in Tanah Grogot. Its leader, Pak Bachrudin, favours a clear and hierarchical structure, which, he claims, is according to Paser’s *adat*. Bachrudin feels that in the past many Dayak groups had a hierarchical social organisation for military purposes and although other Paserese contest this, stratification is a common feature in various Dayak cultures (cf. King, 1993; Sellato, 2002).

The PBA was established as an organisation to represent the interests of the Paserese, whom Bachrudin estimates to make up some forty percent of Paser’s total population. He felt that Paserese culture was looked down upon by the non-Paser majority as well as by the government, while neither had any notion of Paserese *adat*. The PBA leader believed the local government apparatus to be incapable of assessing the quality of land claims based on Paserese *adat* as nearly all officials originated from other parts of Indonesia. Therefore, Bachrudin decided, the PBA should provide a book on the history of the Orang Paser, a book on Paserese *adat*, and compose a good bilingual Indonesian-Paser dictionary in order to provide the regional government with the knowledge and tools it needed to govern the district successfully. The research for these publications, which the PBA undertook on his initiative, gained Bachrudin extensive knowledge of Paserese *adat*. He concluded that his information was not just relevant for the government –the Paserese themselves needed it as well. The Paserese needed knowledge of their own *adat* in order to understand the rights that could be derived from it. As he found that many Paserese individuals had but little knowledge of their own history and *adat*., Bachrudin decided to write his book on *adat* first in Paserese and translate it into Indonesian later. The project proved an extensive job, among others because *adat* concepts were frequently explained in different ways, or known under different names in the various areas of Paser. Nonetheless Bachrudin persisted that one



general set of *adat* principles formed the base of *adat* throughout Paser.<sup>3</sup>

The PBA's academic goals soon became subservient to more pressing needs. As the organisation's fame spread, its board was regularly called upon by Paserese to settle disputes according to *adat*. The daily board of the PBA consisted of only a few members, mostly pensioners like Bachrudin. These men travelled the district on their mopeds in order to talk to village *adat* leaders and local *adat* authorities. If called upon to assist in *adat* conflicts they would bring sons, nephews, and such supporters as they gained over time, who would be identifiable as PBA members by badges pinned to their chests. The board would dress in self-styled semi-military uniform. Together, they formed an impressive host.

The PBA's organizational structure supported such displays. Based on their research, the PBA board had come to the conclusion that the Orang Paser used to have a stratified *adat* leadership. Above the village *adat* leaders used to stand regional leaders: twelve *manti* and eight *pengawa*. Their relationship and tasks had not become fully clear, but both were positions of authority and at least the *pengawa* were *adat* leaders whom village *adat* leaders could consult when they could not decide a case themselves.<sup>4</sup> Above these stood one supreme *adat* leader who was the highest *adat* authority of Paser and known as *entero*. This was more than just an honorary position. An *entero* had to be able to command absolute authority. The PBA's research established that by modern day standards an *entero* should be:

1. competent in magic
2. able to speak Indonesian
3. very well versed in Paserese *adat*
4. sufficiently educated to command respect from government officials
5. brave and confident in his bearing and behaviour

An *entero* thus combines a number of essential qualities. He (a woman cannot be *entero*) is a strong, educated and dominant personality who moves as easily in traditional Paserese communities as in government circles. He has a thorough command of languages and jargon and is a talented speaker. Moreover he commands magic, which in the case of traditional Paserese magic is usually considered to be black magic as much as more respectable varieties.<sup>5</sup> He is, in short, an individual

3 I, for one, am not entirely convinced by the claim. Some of its problems are discussed at greater length in appendix 3.

4 Sources outside the PBA confirm this view but were not certain of these officials' functions either. As '*manti*' closely resembles the Indonesian/Malay '*menteri*' it is quite possible that these were officials from the sultan's court. The position of *pengawa* is still remembered among older people and indeed comes to the fore as a regional *adat* authority. In several areas the families which provided the *pengawa*, apparently a hereditary position, still retain this association. The head of PeMa, for instance, stems from a *pengawa* family and this is an underlying reason for the authority Paserese set to his advice and decisions. The position and authority of the *pengawa* at first sight resembles that of the paramount *adat* heads (*kepala adat besar*) of Krayan, but as *pengawa* only exist in theory there is little point in pursuing the comparison.

5 Notably the Paserese communities in certain parts of the Gunung Lumut area are reputed to be highly proficient in black magic. Lowland people buy powerful charms from them to protect their homes against all sorts of bad and evil influences. Lowland informants persist that the mountain magicians are capable of producing a powder which, when inhaled, instantly kills while leaving the spirit a prisoner of the killer. I have not met anybody in the mountains willing to confirm this, though a fair number were not prepared to deny it either. Ethnic non-Paserese inhabitants of the district often ascribe this reputation for black magic to all Paserese.

to be reckoned with. In rebuilding Paser's *adat* structure, reinstalling the *manti* and *pengawa* was deemed unnecessary. The functions were too vague and modern means of communication and transport made it easy for the PBA's local representatives to request assistance from the board if necessary. Yet an *entero*, a strong leader who could unite the Orang Paser and represent them with the government, seemed a valuable and necessary position to revive. An *entero* election was organised among the PBA's membership and Bachrudin was elected. His extensive studies and wide experience of *adat* made him intellectually suitable, whereas his personality, bearing and experience as a police officer gave him the leadership qualities desired in an *entero*. As regarding magic, Bachrudin originated from the Gunung Lumut community of Kepala Telake, which is explicitly renowned for its magical competencies.<sup>6</sup>

Under the leadership of Bachrudin, the PBA built a reputation for itself. Fiercely opposed against the going historical perspective of the Orang Paser as subjugated to a Buginese sultanate, the PBA looked towards Kalimantan's Dayak for affiliation. Bachrudin had met Pak Josef of the Kalimantan Dayak *Adat* Foundation (*Dewan Adat Dayak Se-Kalimantan*, DADK, see paragraph 1.1.3) at that organisation's 2001 congress and had been made head of the DADK's stewards, a small group of ethnic Dayak police officers and soldiers charged with keeping order at the DADK's congresses. Pak Josef and Bachrudin got along well, and DADK delegations visited the PBA in Tanah Grogot at several occasions. The link with the DADK was a political partnership rather than an unconditional alliance. In its statutes the PBA claimed full autonomy and independence of non-Paserese parties, forces and influences, including Dayak.

*On principle the PBA does not want to join those sheltering under institutions and organisations of any kind. Also, the PBA is permanently committed and independent while its opinions are permanently based on the original adat Paser, its statutes and regulations. Although engaging in partnerships and friendships, the PBA cannot be led by individuals of other ethnic groups or descending of other groups with the exception of staff and members of LSM founded by the PBA itself such as Paji Pradat and Ruganda (Pertahanan Benuo Adat, 2005:1).*<sup>7</sup>

The organisation and its *entero* gained a varied reputation. Among the Paserese living in or near Tanah Grogot they became known as authoritative *adat* experts ever willing to render assistance. Among the often non-Paserese opponents of their clients they are notorious for the large indemnifications they claim. The PBA has a stake in these as they usually receive a percentage in exchange for their efforts. An example is a 2003 case in the village of Rangan where the village head single-handedly allowed a mining company to work on that village's land and was

6 Bachrudin's magical abilities are discussed further on in chapter nine.

7 PBA pada prinsipnya tidak mau bergabung yang bernaung dibawah lembaga dan organisasi manapun. Juga PBA tetap komit dan indepaenden, dengan tetap pada pendiriannya berdasarkan Keterangan Adat Paser dan AD/ART. Cukup bermitra bersahabat dan PBA tidak diketuai oleh suku lain atau keturunannya suku lain kecuali staf dan anggota LSM yang dibentuk oleh PBA itu sendiri seperti Panji Pradat dan Ruganda.



Bachrudin dressed in official PBA uniform dressed in official PBA uniform.

handsomely paid for this. Whereas the villagers swiftly sorted out the village head, they could not revoke his written permission or induce the mining company to pay a larger fee to the village as a whole. The company maintained that it had paid the village head and hence upheld its part of the deal. The villagers then requested the assistance of the PBA, whose members arrived at the company's office in force. In two meetings the board managed to secure an indemnification of 200 million rupiah for the village.

It is rare for the PBA to go as far as uttering overt threats. In 2000, against the background of the Dayak-Madurese wars in West and Central Kalimantan, they informed the police and the district head that they felt that the board of a local company who stubbornly refused to pay compensation for adat land could well be in danger from 'angered Paserese' who the PBA might not be able to appease for much longer, but this was unusual. Threats, in so far as they are explicitly formulated, are brought to bear in closed discussions with parties from whom compensation is sought. Quite often however, the implicit threats of numerous semi-organized and organised individuals turning up at the doorstep brings the point across perfectly clear. On the whole, the PBA largely refrains from engaging in public issues and avoids confrontations with government authorities. As a retired police officer Bachrudin maintains good relations with the regional police, who include some Paserese officers sympathetic to the PBA, and he is unwilling to endanger these relations. PBA rallies against the government thus only occur when this is deemed absolutely necessary. In 2002 an action took place in Penajam Paser Utara where the local PBA representative, with the support of the *entero* and in the presence of the PBA rank and file, complained to the district government and the press that the new district's motto was in Indonesian instead of in the local Paserese

language (see Kaltim Post, 14 November 2002). The issue was brought before the district parliament and resulted in a change of motto.<sup>8</sup>

The PBA reversed their non-government policy in 2005, for which three main reasons can be discerned. First, the number of cases in which the assistance of the PBA was called upon had dramatically declined. Companies were growing wise and many directors had decided that it was better to deal directly with complaining villagers than to have to engage the more troublesome –and far more demanding– PBA. Faced with a lack of income, the PBA needed to find other financial sources. The second reason is one of ambition and mutual support in competing with the LAP. Under district head Syarkawi the LAP had managed to become a strong influence with the local government. Its leader, Ishak Usman, had competed in the 2005 district head elections and had shown himself an avid criticaster of Ridwan Suwidi, the candidate who ultimately won. During the campaigning period the PBA sought, and gained, access to Suwidi and put their weight behind him. It is likely that Suwidi wanted to have a counterweight in place that would allow the government to distance itself somewhat from the LAP without creating the impression that it distanced itself from *adat*. The third reason concerns a need for new allies. Late in 2005 Bachrudin and Pak Josef of the DADK had a fall out over Bachrudin's refusal to organise PBA elections for a new *entero*. DADK statutes prescribed that leaders should be elected democratically every couple of years. Bachrudin maintained that the PBA was not the DADK and that he was the only individual sufficiently knowledgeable to lead the PBA. As a result, Bachrudin's PBA was sidelined by the DADK and discontented, ambitious elements of the PBA set up a local branch of the DADK in Tanah Grogot. Weakened but not beaten, support for the PBA thus shifted from their beginnings among the Paserese population to becoming a partner to the district government, the same position for which the PBA criticized the LAP under the previous district head.

### Representing Paser's *adat* adherents: the LAP.

Shortly after the founding of the LAP in 2000 its leaders concluded that a broad base would give the organisation a sturdier position vis-à-vis solely Paserese organisations such as the PBA or PeMa, and that the district government was likely to favour non-exclusive *adat* organisations over those representing the interests of individual ethnic groups. In 2003, at the LAP's first major congress, its leader Ishak Usman and the district secretary delivered speeches strongly emphasizing the role of the LAP as a builder of bridges between the various ethnic groups that together make up Paser's population (cf. *Kaltim Post*, 29 and 31 July 2003). All of these groups adhere to *adat*, Usman argued, and their respective *adat* values make the observation of *adat* by the district government a key issue for the LAP.

8 From the Indonesian 'Gerbang Sepadu' (an acronym of *Gerakan Pembangunan Semesta Terpadu*; Movement for Integrated Overall Development) to the Paserese 'Benueo Taka', meaning 'our area'. Note the use of 'benueo' which is the second word (and the only Paserese word) in the PBA's name as well. A subtle association. The action served as an excuse to introduce Penajam's government to the PBA; its subject was comparatively minor.

Founded by a small group of ethnic Paserese civil servants, the LAP was initially intended as an organisation for the preservation of the Paserese language, culture and *adat*. Unlike the PBA and PeMa, whose orientations were strictly non-governmental, the professional background of the LAP's founders made that the LAP looked at the district government as a potential partner to their projects. Cooperation between the government and the LAP was established on the basis of district regulation number 3 of 2000 on the 'Empowerment, Preservation, Protection and Development of *Adat* and *Adat* Organisations'.<sup>9</sup> This regulation indicated the need for an *adat* organisation in Paser to advise and assist the government, and set out this organisation's desired structure and relation to the government. The *adat* organisation's function was to advise the government and facilitate discussions between the government and *adat* leaders whenever required. Its structure was based on that of the government with representatives at the village, sub-district and district level who would cooperate with their government opposite number. The district government would not be obliged to follow the *adat* organisation's recommendations, but would take note of them as the opinions of the population. Moreover, the regulation instructed that the *adat* organisation should act as an umbrella organisation for all of Paser's *adat* groups regarding contacts with the government. Any organisation wanting to bring issues to the government's attention would have to state its case to the LAP, which would then communicate those issues to the district government. Although this arrangement further strengthened the LAP's position in the government's offices, it also gained it a popular reputation as the government's lapdog. As a result, numerous small organisations joined the LAP and gained the organisation popular recognition simply for its size. From a governmental perspective, the LAP's moderate outlook and government affiliation made it a suitable candidate to engage with. Moreover, the LAP's board frequently and publicly indicated its aversion of meddling in district politics and its intention to fully concentrate on its *adat* tasks.<sup>10</sup>

In daily practice the LAP lacked dash. Its position close to the government effectively prevented it from engaging in independent decision taking. In disputes over *adat* land its board limited itself to offering non-invasive suggestions on the meaning of *adat* in the particular case and to recommending a visit to the district court if the conflict could not be settled amicably. This timid stance helped to bring the PBA to social prominence. The PBA had refused to join the LAP and received cases from Orang Paser disappointed by the LAP's ineffectiveness. The LAP board's conservative stance also caused a counter-reaction among some of the younger members who favoured a much more active approach and organised in a number of small organisations operating semi-independent from the LAP. These organisations criticized government politics in newspaper articles and actively came out in support of Orang Paser in *adat* related conflicts. Not all of their projects had the intended result though, not in the least because support from the LAP board was frequently lacking.

<sup>9</sup> *Pemberdayaan, Pelestarian, perlindungan dan Pengembangan Adat Istiadat dan Lembaga Adat.*

<sup>10</sup> This statement was regularly and frequently repeated at meetings and in the media (cf. *Tribun Kaltim*, 25 July 2003), often to emphasize the LAP's role as a uniting organisation unrelated to any political outlook.

In 2003 a proposed district legislation on the non-existence of *hak ulayat* in Paser (discussed at greater length in chapter 10) put the LAP board on the spot. Rather than losing its credibility as the defenders of the interests of *adat* communities, the board chose to publicly speak out against the district regulation (*Kaltim Post*, 12 and 16 December 2003). The LAP's board action took the PBA, who were intending to stage a demonstration a few days later, completely by surprise and essentially robbed them of the initiative. The LAP's popularity soared, as did the organisation's ambition.

In 2005, Ridwan Suwidi, the newly elected district head, continued the cooperation with the LAP and formally maintained the organisation's umbrella function. Suwidi maintained a greater distance and allowed the PBA to openly bypass the LAP in communicating with the government, yet Suwidi carefully balanced his favour with the two organisations. In 2005 a combined team of LAP notables and university scholars from Banjarmasin, rather than the PBA, won a tender by the district government to publish a book on the history and culture of Paser. The resulting book (Hairiyadi, 2005) met with much critical acclaim.

At the LAP's second congress in 2007, Ishak Usman announced his resignation as chairman and suggested one of the younger pro-active members as his successor (*Kaltim Post*, 8, 9, 10a May 2007), thus supporting a turn of policy. As Ridwan Suwidi ceremonially opened the activities, he informed the audience and the press that the district government valued the cooperation with the LAP and intended to request input from the congress on various issues to determine its future policies (*Kaltim Post*, 10b May 2007). Both bodies were thus contemplating new courses of cooperation: the LAP moving towards more pronounced activism, the government to curbing potential upstarts within the LAP by stating its willingness to incorporate LAP viewpoints in policy making. Whereas the government would not want to lose such an ally, the LAP would have great difficulty in losing its popular pro-government image and become an independent organisation. Even if it would manage this, would that be worth the cost of losing the central position and direct access to the government? Each had clear interests in a continuation of the coalition, even if neither was particularly keen.

### Ears to the ground: PeMa.

In the preceding parts I already indicated various properties of PeMa; a small organisation operating mainly away from the capital of Tanah Grogot in and around the Gunung Lumut area. PeMa is aligned to the LAP out of necessity, but not keen on that organisation as its activities rarely result in actions useful to the Paserese *adat* community that is PeMa's field of activity. PeMa is aligned to Jakarta-based AMAN. Although this does not result in financial or material support, it has put Orang Paser communities on the map of Indonesia's *masyarakat adat*, ensuring that PeMa is informed by AMAN of relevant developments effecting the position of *adat* communities. Members of PeMa have at several occasions participated in provincial or national *adat* congresses organised by AMAN. PeMa's role in Paser is essentially different from those of the LAP and PBA. Tiny and without funding, its political influence in the district is negligible. Yet its board does not aim for local

power they focus on more abstract, long-term goals. PeMa's activities are among the most ambitious in the district, as they tie Paser into a larger context of national *adat* rights and the international indigenous rights debate.

In August 2004 I was working in Mului. The rainy season had begun, making the logging road to the village difficult to pass for everything smaller than large, six-wheeled trucks. We had been dropped off in the village a week before using a four wheel drive jeep which, although lightly loaded, still had considerable difficulties coping with the thick and sticky mud that the rain had created. One afternoon, returning to Mului after visiting some outlying fields, we saw a moped coming up from the plain. Its driver and passenger patiently struggled the vehicle uphill through the mud and their trip appeared to be one of alternating pushing the bike through the mud and riding it, a serious effort considering that from the paved road at the foot of the mountains the dirt road stretches some sixty kilometres before reaching Mului. Upon arrival, the travellers turned out to be the head and one of the other members of PeMa's board. They had received a text from Jakarta which they wanted to discuss with the Paserese communities of Gunung Lumut and they had taken a few days off from their jobs to visit some of the villages. Curious, I joined the crowd that had assembled to hear their news. They explained that the government of Indonesia was working together with other governments to come up with a treaty to protect the rights of *adat* communities. AMAN had received the draft text of the treaty and had asked its regional representatives for comments. The PeMa members, urban people themselves, decided that they should visit *adat* communities and discuss the text with them. As we all settled down in one of the larger houses to listen to the reading of the text and discuss it at our leisure, I was at first quite impressed by the extensive rights that the treaty would apparently provide *masyarakat adat*. However, some five minutes into the text I started to feel that I had read it before, although I could not immediately place it. Then the words *deklarasi perseikatan bangsa-bangsa* –United Nations Declaration– came by and I understood that they were discussing the draft UN Declaration on the Rights of Indigenous Peoples rather than some Indonesian legal issue. During a lull in the conversation I asked PeMa's leader whether he was aware what the text was, which he was. He felt that if all nations of the world were together working on the recognition of indigenous rights they should receive input from the relevant persons. Hence he had filled up his moped's tank and started his difficult trip.

The general consensus on the draft declaration was that it was a rather good piece of legislation, although it should be made more clear that in Indonesia the main issue was not so much discrimination or repression but recognition of land rights. If that would be included, the people of Mului felt, the declaration would be quite useful.

Early the next morning PeMa's members left again, this time travelling downhill with the engine turned off to save gasoline. They would send a written report on their findings to AMAN in Jakarta, who in turn were expected to pass it on to the UN. Whether the comments of the Paserese of Gunung Lumut ever reached the drafters of the declaration is not known to me, but I was quite impressed by encountering such an abstract and remote piece of legislation in the heartland of

Kalimantan. The globalisation of Coca-Cola and Madonna is one thing, but one does not expect to witness a discussion on the merits of international legislation in such a remote village. The Indonesian *adat* movement, it seemed, was going places.

### 7.3 Competing organisations in Krayan

In Nunukan the potential of *adat* authority as a means of access to government authority is well-known. As discussed in chapter 6, the position of Lundayeh *adat* and its authorities in Krayan is one of considerable autonomy and its leaders have influence with Nunukan's district government. Enlisting the reputation of Krayan's *adat* leaders could solidify the influence of new *adat* organisations operating in the centre of regional government. A few enterprising individuals have positioned themselves on the margins of traditional *adat* and set up non-governmental organisations aimed at furthering the interests of *adat* in a larger area, in which relations with government are a central issue. The goal is not unlike an umbrella position such as the LAP's in Paser, but approached from the other side. In Nunukan's capital of Nunukan city, two such organisations exist which both claim firm attachments to in Krayan's *adat* authority. The first is the Dayak Lundayeh Adat Council (*Dewan Adat Dayak Lundayeh* or DADL) that was introduced in chapter 1 and is headed by Pak Josef. The second is an organisation aspiring to influence throughout the Indonesian part of Borneo; the Union of Indigenous Groups of Kalimantan (*Persekutuan Suku Asli Kalimantan* or Pusaka). Both concern themselves with claims of *adat* land, as part of their organisations' overall claims to *adat* leadership. The main relevance of their existence, however, lies in their utilisation of *adat* as a political tool.

#### Almost Lundayeh: the DADL

The DADL has its origins in a cultural and *adat* festival held in Krayan in 1992. The meeting was intended to unify and solidify the relations between the various sub-groups that together make up the Lundayeh. The gathering intended to come up with a permanent board of seven members to facilitate this and future meetings. On the board only one paramount *adat* head was elected; Fairy Palung of Krayan Darat.<sup>11</sup> The influence of the established *adat* elite in the board hence was rather limited. Second, the meeting was intended to define the ethnic make-up of Krayan's population, with 'Lundayeh' as working concept for the meeting.<sup>12</sup> Third, more permanent forums for similar gatherings were being planned. Fairy Palung became the chair person of a forum on *adat*, while Pak Josef became advisor to the forums' overall board.<sup>13</sup> The forums functioned for several years, but became in-

<sup>11</sup> Decision of the great *adat* meeting and cultural festival of the Lundayeh number 03/MBA-FKL/VIII/92 (*Keputusan Musyawarah Besar Adat dan Festival Lundayeh nomor 03/MBA-FKL/VIII/92*).

<sup>12</sup> Decision of the great *adat* meeting and cultural festival of the Lundayeh number 05/MBA-FKL/VIII/92 (*Keputusan Musyawarah Besar Adat dan Festival Lundayeh nomor 05/MBA-FKL/VIII/92*).

<sup>13</sup> Decision of the great *adat* meeting and cultural festival of the Lundayeh number 07/MBA-FKL/VIII/92 (*Keputusan Musyawarah Besar Adat dan Festival Lundayeh nomor 07/MBA-FKL/VIII/92*).



creasingly lethargic and inefficient. In 2001 a second great *adat* gathering was held in Krayan. Its final report states that it was the second gathering of all the Dayak Lundaya, although the first gathering's reports all referred to Lundayeh. The program of the meeting was radically different from the first one, possibly at least in part due to the climate of *reformasi* politics. All major Lundayeh politicians, as well as non-Lundayeh prominents from various areas and cities in East Kalimantan gave talks. Pak Josef was listed as Lundaya *adat* head and elected chair of the meeting with various of Lundayeh government officials from outside of Krayan making up the rest of the board.<sup>14</sup> The meeting voted over various proposals describing and delineating the structure of the Lundayeh *adat* authority. It decided that paramount *adat* heads should be known as regional *adat* heads (*kepala adat wilayah*), referring back to the four *adat* regions of Krayan, and stand under the leadership of a supreme *adat* head (*kepala adat besar*).<sup>15</sup> In addition to the usual functions, this supreme *adat* head would be responsible for the protection of Lundaya *adat* wherever it was to be found and the furthering of Lundaya *adat* interests outside of Krayan.<sup>16</sup> It was established that the Lundayeh were in fact a part of the larger group of the Lundaya, as were all other groups with similar names from Krayan and nearby areas.<sup>17</sup> When the supreme *adat* head of the Lundaya was elected, the choice fell upon Pak Josef.<sup>18</sup>

Whether the DADL and the introduction of a supreme *adat* head outranking the four paramount *adat* heads was an outright *adat* coup or an example of utter miscommunication, as is nowadays suggested in Krayan, is not clear. The new supreme *adat* head did not go down well with the Lundayeh *adat* elite, especially since none of them had been involved in the meetings of the DADL or had confirmed the validity of the new position of supreme *adat* head. As it became clear that a large and influential majority of Krayan's population was not accepting this new authority, a diplomatic way out presented itself in the usage of 'Lundaya'. A term which, respondents claimed, was used just for that purpose. As Pak Josef claimed to be the supreme *adat* leader of all Lundaya, people in Krayan wondered, ignoring the decision of the 2001 *adat* meeting on the issue, who he exactly thought of as Lundaya? They were not, since they were Lundayeh. As Pak Josef did not use Lundayeh, the *adat* leaders publicly assumed that he possibly referred to a small group of people in his village of origin, but apparently not to the Lundayeh, which sufficed for them as sufficient reason not to pursue the matter further. In fact, the paramount *adat* heads rather like the idea of another influential Lundayeh outside of Krayan. As long as Pak Josef refers to Lundaya rather than Lundayeh and

does not act as an *adat* head when at home in Krayan, he has the passive backing of the paramount *adat* leaders.

### All the natives of Kalimantan: Pusaka

Whereas the above may have been an attempt to take over Lundayeh *adat* leadership from the inside, outside attempts at enlisting Krayan's *adat* authorities are being made as well. An example is the membership recruitment carried out by the Union of all-Kalimantan Indigenous Groups (*Persatuan Suku Asli se-Kalimantan*, Pusaka). This organisation was established in Nunukan City by a group of senior government members and political party officials. Although based in Nunukan, these officials dispose of a large network of contacts in the administrations and regional political party chapters throughout East, South and Central Kalimantan. Pusaka aspires to further the development and well-being of all groups indigenous to Kalimantan, as well as provide a political power block against growing non-indigenous influence in Borneo.<sup>19</sup> Its founders maintain they have the support of all indigenous groups of Kalimantan, whom they defined as all non-migrant population groups. This means that in addition to the Dayak groups, all Malayu coastal groups such as the Banjarese, Kutai and Paserese are included. The board reflects this outlook: its members are of Dayak or Malayu descent and either Christian or Muslim but including most combinations of ethnicity and religion present in Kalimantan. This diverse make-up of the board and their efficient access to regional political networks illustrate Pusaka's political potential. In 2005, the board visited Krayan with an agenda focussed on obtaining support for two main issues: winning the 2006 Nunukan district head elections and establishing the province of North Kalimantan (*propinsi Kalimantan Utara*, see chapter 4). A new province to be formed out of the northern part of East Kalimantan which will, many believe, greatly improve the economic situation of the northern areas. In the district head elections (discussed in chapter 10), both Pusaka's chairman and the wife of one of the senior board members were candidates. Both needed votes, and both attempted to gain support through Pusaka.

Pusaka's board visited Long Bawan in Krayan on 21 August. A local Lundayeh representative had informed the population and *adat* leaders of Pusaka's imminent visit and made sure that preparations were made. His stories about Pusaka had inspired considerable enthusiasm for the organisation in Krayan. The senior government status of Pusaka's board members provided confidence in the organisation's power in furthering the interests and development of the indigenous groups of Kalimantan. Therefore, several dozen individuals had signed up to become members when the board would visit.

The event was staged to impress. Pusaka's board travelled in full Pusaka-regalia, a mixture of police-style uniforms and Dayak costume, and brought their own black-clad and sunglassed stewards. They were received by a traditional bamboo flute orchestra and led to a stage build upon Long Bawan's central football field. Here, before a mildly entertained audience, some thirty aspirant Pusaka-members,

<sup>14</sup> Decision of the great *adat* meeting and cultural festival of the Lundaya number 03/MBADL/VIII/2001 (*Keputusan Musyawarah Besar Adat dan Festival Lundaya nomor 03/MBADL/VIII/2001*).

<sup>15</sup> Decision of the great *adat* meeting and cultural festival of the Lundaya number 04/MBADL/VIII/2001 (*Keputusan Musyawarah Besar Adat dan Festival Lundaya nomor 04/MBADL/VIII/2001*).

<sup>16</sup> Decision of the great *adat* meeting and cultural festival of the Lundaya number 06/MBADL/VIII/2001 (*Keputusan Musyawarah Besar Adat dan Festival Lundaya nomor 06/MBADL/VIII/2001*).

<sup>17</sup> Decision of the great *adat* meeting and cultural festival of the Lundaya number 10/MBADL/VIII/2001 (*Keputusan Musyawarah Besar Adat dan Festival Lundaya nomor 10/MBADL/VIII/2001*).

<sup>18</sup> Decision of the great *adat* meeting and cultural festival of the Lundaya number 12/MBADL/VIII/2001 (*Keputusan Musyawarah Besar Adat dan Festival Lundaya nomor 12/MBADL/VIII/2001*).

<sup>19</sup> Kaltim Post (2005, 17 April 2005) provides a useful report on Pusaka's intentions and supporters.

most dressed in identical Pusaka-blouses distributed by the stewards, climbed the stage to join the chairman in taking an oath of membership:

1) We, members of Pusaka Are citizens of the Republic of Indonesia Who adhere to Pancasila and the constitution of 1945 and to other laws in force.	1) <i>Kami warga Pusaka Adalah warga negara Republik Indonesia Yang tahan kepada Pancasila dan Undang- Undang Dasar 1945 serta peraturan perundang- undangan yang berlaku lainnya.</i>
2) We, members of Pusaka are ready to defend and guard the sover- eignty of the unified nation of the Republic of Indonesia	2) <i>Kami warga Pusaka siap mempertahankan dan menjaga kedaula- tan negara kesatuan Republik Indonesia</i>
3) We, members of Pusaka in the sub-district of Krayan Highly esteem and defend the preservation of adat and customs or the cultural values in the land of Kalimantan	3) <i>Kami warga Pusaka kecamatan Krayan menjuju tinggi dan mempertahankan melestarian adat istiadat atau nilai budaya di bumi Kalimantan</i>
4) We, members of Pusaka in the sub-district of Krayan are ready, with regard to the human resources, to become pioneers of development in the land of Kalimantan	4) <i>Kami warga Pusaka kecamatan Krayan siap mengingatkan sumberdaya manusia untuk menjadi pelopor pembangunan di bumi Kalimantan</i>
5) We, members of Pusaka in the sub-district of Krayan are ready to support development programs that the government will carry out in the interest of the welfare of the people.	5) <i>Kami warga Pusaka kecamatan Krayan siap mendukung program pembangunan yang dilaksanakan oleh pemerintah sebesar-be- sarnya untuk kesejahteraan rakyat.</i>
6) We, members of Pusaka in the sub-district of Krayan Permanently guard harmonious contacts And good cooperation among our fellow members in fighting for adat rights in the administration, the adat right of the people of Kalimantan.	6) <i>Kami warga Pusaka kecamatan Krayan tetap menjaga hubungan yang harmonis dan kerjasama yang baik antara sesama warga dalam memperjuangkan hak-hak adat dalam administrasi, hak adat masyarakat Kalimantan.</i>
7) We, members of Pusaka in the sub-district of Krayan Are ready to guard the peace and continuity of the land of Kalimantan as well as its nature, as the inheritance of our ancestors As wide and far as the interests of the region of Kalimantan require and the unified nation of the Republic of Indonesia	7) <i>Kami warga Pusaka kecamatan Krayan siap menjaga keamanan dan melestarikan bumi Kalimantan beseerta sumber alamnya sebagai warisan nenek moyang seluas-luasnya untuk kepentingan daerah Kalimantan dan negeri kesatuan Republik Indonesia.</i>
8) We, members of Pusaka in the sub-district of Krayan will guard the order and safety in the area of Kalimantan with joyful consciousnesses	8) <i>Kami warga Pusaka kecamatan Krayan akan menjaga ketentraman dan ketertiban wilayah Kalimantan dengan kata hati rahayu.</i>
9) We, members of Pusaka in the sub-district of Krayan Are ready to become actors and pioneers in protecting and guarding what is needed in the brotherly union of all the people of Kalimantan. Especially in Krayan	9) <i>Kami warga Pusaka kecamatan Krayan siap menjadi aktor dan pelopor dalam meme- lihara dan menjaga kebutuhan dalam ikatan persaudaraan seluruh warga di Kalimantan. Khususnya di Krayan.</i>

After the oath taking the visiting Pusaka board was treated to traditional Lundayeh dances and feats of acrobatics, and Pusaka’s chairman gave a passionate speech on the potential of the organisation. When the board flew back to Nunukan city, the meeting in Krayan was considered a success and it was believed that Krayan was won for Pusaka’s candidate in the upcoming district head elections. In the months that followed the board met with other indigenous organisations in Nunukan and East Kalimantan –among others Pak Josef’s DADL- to ensure their support as well, and continued to set up cooperations with other organisations aimed at furthering the interests of local indigenous groups in especially East Kalimantan.<sup>20</sup>

As it turned out, neither of Pusaka’s candidates won the elections. In Krayan, the Pusaka candidates got virtually no votes. Even though Pusaka’s program was interesting enough, many Lundayeh saw more merit in supporting the sitting district head and vice-district head. The latter was an ethnic Lundayeh and had been instrumental in the district government’s recognition of Lundayeh *hak ulayat*.<sup>21</sup> The Lundayeh had preferred to put their trust in one of their own.

Pusaka receives support from Krayan’s *adat* authorities in other affairs<sup>22</sup>, but the interest of the ethnic group takes precedence over that of the larger Kalimantanese indigenous community. The Lundayeh are not unique in this as most indigenous Kalimantanese groups vote in this way, thus effectively undermining Pusaka’s political potential. Nonetheless these groups can be united against real or perceived non-indigenous threats, as the next paragraph will make clear.

The two organisations discussed in this paragraph illustrate the potential that the association with *adat* authority may offer politically. Krayan’s *adat* is known to be strong and commands respect with Nunukan’s district government. Controlling it, or even giving the impression of doing so, smoothens access to the government’s offices. Yet Lundayeh *adat* authority lies with its own elite of *adat* leaders and this group is suspicious with regard to whom is invoking its authority, especially where the government is involved. The DADL’s orientation towards Lundaya rather than Lundayeh *adat* and Pusaka’s championing of all Kalimantan’s indigenous groups make them potentially useful organisations to the Lundayeh *adat* leaders, but these organisations’ interest in controlling –or at least associating with- Lundayeh *adat* authority is not beyond them. Alliances are entered into, but very carefully.

The Lundayeh *adat* leaders have good reason for this. Without outside support they have managed to set up a working relationship with the district government that gives them considerable administrative freedom and resulted in the recognition of Lundayeh communal land rights (see chapter 10). Outside organisations claiming to act in the name of Lundayeh *adat* could do a lot of damage there. As these organisations need the Lundayeh rather than the other way around, the *adat* leaders thus can afford to be stand-offish. They may be *masyarakat adat* and indigen-  
ous to Kalimantan, they have a lot to lose if they join forces with these activists.

20 Among others Pak Bachrudin’s PBA.

21 See chapter 10.

22 For instance in a case summer 2007, when a case of apparent corruption in the district office of public works almost led to large scale Dayak-Bugis interethnic fighting (see *Kabar Indonesia* 8 and 27 July 2007; *Kaltim Post* 5 August 2007 for a more detailed discussion).

## 7.4 East Kalimantan and Dayak power

The five organisations discussed in the preceding paragraphs are not the only *adat* groups in East Kalimantan. They are, however, the major groups in Paser and Nunukan and provide illustrations of three main forms of arguing for *adat* rights. By promoting the interests of a specific ethnic group vis-à-vis that of other groups in society (the PBA and potentially the DADL and Pusaka), by attempting to further recognition of *adat* rights by official law through an (inter)national network of interest groups (PeMa), and by mobilising *adat* as a vehicle to gain influence with the regional government (LAP, Pusaka, potentially the DADL and PBA). Each organisation aspires to a type of recognition of *adat* that goes beyond, but includes, the recognition of *adat* land rights. In every case the drive is for a certain measure of autonomy through the recognition of *adat* rules as a normative system, governed by its own authorities. Some organisations already claim this autonomy. The PBA and the DADL call themselves *adat* institutions that hence are beyond the scope of the *Ormas* and *Yayasan* Laws. A claim that requires support, which is mobilised in the shape of numerous supporters. Both groups have their bases at a local level: the PBA among the Paserese and the DADL among the urban Lundayeh of the coastal cities. Their supporters have gained the organisations credibility with the government, yet both aspire to greater influence. Likewise, Pusaka is not the first organisation aspiring to representing the interests of Kalimantan's indigenous peoples. Earlier, relatively successful attempts have been set in motion to unite the Dayak. The combined weight these groups can pose a force to be reckoned with, as the Dayak-Madurese wars of West and Central Kalimantan have shown. Albeit ambitious, this strategy represents a fourth way of furthering *adat* interests; for a large, highly diverse group and through the imminent threat of violence.

### 'Dayak' as a unifying denominator

The oldest Dayak organisation in the province is the East Kalimantan Dayak Association (*Persekutuhan Dayak Kalimantan Timur*, or PDKT), an organisation which lobbies for proportional Dayak representation in government positions (Van Klinken, 2002:19) and maintains close links with the provincial government (Thung et al., 2004:55-59). Established in 1993, the PDKT is a classic example of the problems that attempts to unite the Dayak pose. Schiller (2007) reports how participants at a major PDKT seminar in 1999 attempted to come up with a single representative body into which all East Kalimantan's Dayak groups could be unified. Yet diversity of religion, of cultural practices and even of cultural symbols created considerable problems, whereas vital political matters such as the number of representatives each group should have posed insurmountable difficulties. As the seminar progressed differences seemed to increase rather than subside, a problem that still troubles the PDKT today. When united, the PDKT can function as a strong political tool (cf. *Kaltim Post*, 13 April 2003) but its brittle internal unity greatly hampers it coming into full efficiency.

The DADK gained an influential position when it backed the winning candidates Suwarna and Ngayoh in the provincial governor and vice-governor elections in

2003 (*Kaltim Post*, 29 November 2003). Although this put the organisation in a position close to the government, it made it more difficult for the board to speak out on issues crucial to its grassroots support but sensitive to those in power, such as matters of land access (Thung et al., 2004:59-63). Many of its supporters felt that the proximity to the government effectively prevented the PDKT from independent action and complained of the lack of transparency in the board's decisions (Schiller, 2007:83-84). Nonetheless the PDKT chose to maintain and even strengthen its ties to the government by putting some senior ethnic Dayak government officials in key positions of its board (cf. *Kaltim Post*, 21 February 2007). Although this gave rise to considerable popular chagrin, no alternatives to the PDKT existed. Dayak government officials as well as senior *adat* leaders were attached to the PDKT. By setting up these connections, the PDKT had effectively made influential and independent Dayak unavailable to rival organisations.

In 2001 however, a number of senior Dayak with their roots in other social bases –the University of Balikpapan and the church– decided to start an alternative organisation; the Kalimantan Dayak *Adat* Foundation (*Dewan Adat Dayak Se-Kalimantan*, DADK) and move away from the PDKT. This group united urban Dayak by working at the grassroots level of the church, the Dayak student community, and the network of junior *adat* leaders. Initially the DADK and PDKT coexisted peacefully. The DADK's main focus lay on solving practical issues among the Dayak population according to *adat* and did not much involve itself with politics. Yet contacts with the government turned out to be unavoidable for the DADK. Many Dayak complains concerned *adat* land for which the government had given out permits to third parties. Contacts with officials evolved from incidental to institutional and Dayak politicians became aware of the DADK, some joining up of their own account. The violent conflicts in West and Central Kalimantan were unexpected stimuli in this process, as the provincial government decided that a dialogue with the popular DADK could be crucial in preventing similar horrors in East Kalimantan. This gained the DADK a central position in debates over *adat* land, and put them in close contacts with the police and the military as well as with the various Dayak communities.

Recognizing the unifying potential of the DADK, the board decided to do justice to its name and officially establish its presence on a Kalimantan-wide scale. In May 2004 the chair had managed to arrange for a meeting of DADK officials with President Megawati Soekarnoputri, who expressed her support for the organisation's work. Such connections worked to make an impression, and under the chairmanship of the DADK delegations of Dayak *adat* organisations from all over Kalimantan met to discuss issues of concern to the Dayak community at large.<sup>23</sup> As a follow up to this promising start, the first official DADK conference was held in November 2004. The meeting did not go as smooth as the organizers might have hoped. Many of Schiller's (2007) observations regarding the 1999 meeting of the PDKT were true for the formation meeting of the DADK as well. Again the participants' cultural and religious diversity, as well as the number of representatives

23 Among others the meeting yielded a proposal to the national government to construct a trans-Kalimantan railroad on Dayak *adat* lands. The DADK would ensure permission to use the lands and arrange for local workers (*Kaltim Post*, 16 May 2004).

allocated to each respective group dominated the discussions. However, the representatives from East and Central Kalimantan had already prepared various agreements preceding the meeting. Conference participants received a list of these, which the board proposed to make official decisions. Many of these concerned the structure and functioning of the DADK, including the number of the members of the board, and these had the potential to change the DADK successfully from an East Kalimantan organisation into one spanning all of Indonesian Borneo. A main problem was however caused by the absence of West Kalimantan's representatives, whose plane had been gravely delayed.

When they arrived halfway through the meeting many proposed decisions had already been passed. This considerably subdued West Kalimantan enthusiasm for the DADK. Moreover, various Dayak organisations did not attend the conference. Board members of the PDKT and other large organisations had cautioned against joining the DADK as they feared for their own organisations' positions. In part, the DADK had removed this issue by inviting senior members of such organisations to join the DADK's founding board. Some organisations agreed, others refused. Although the DADK brought together numerous Dayak, it certainly did not represent them all.

The 2004 conference also saw the foundation of a hitherto inexistent type of Dayak organisation: five men dressed in military camouflage outfits wearing red berets guarded the entrance doors of the meeting room. Although unarmed, their authority was clear. These five were the first members of the Kalimantan Dayak *Adat* Defence Command (*Komando Pertahanan Adat Dayak Kalimantan*, KPADK) the group resorted under the command of the DADK and was tasked with safeguarding and regulating *adat* related meetings as well as with disciplining perpetrators of *adat* if so instructed by the DADK. In the light of the violent developments in West and Central Kalimantan, one would expect the *Adat* Command to be met with suspicion from the authorities, yet this hardly was the case. A day before the conference, the head vicar of the Samarinda episcopacy urged the DADK chair to fight ignorance, neglect and poverty (cf. *Mirifica e-news*, 2004). The chair's public reply that the Dayak Command would do just that was met with considerable approval of government officials throughout the province. Managing and controlling Dayak in case of social unrest is part of the Dayak Command's task and intended to contribute to the safeguarding of peace and inter-ethnic relations. The provincial police of East Kalimantan and the municipal police of Balikpapan gave their support to the initiative. In 2005, the chair of the DADK was received by president Susilo Bambang Yudhoyono (*Kaltim Post*, 25 May 2005), an event which emphasized and furthered the DADK's position in the province. It led the organisation to further its influence in matters of increasing importance. Two of these, which both took place in November 2005, are discussed next.

### Preventing Dayak-Madurese fighting in East Kalimantan

Throughout East Kalimantan's recent history, outbreaks of violence rarely involved Dayak or indigenous Malay groups. Most occasions concerned Madurese and Bugis immigrants. These two groups operate in the same economic niches of transport,

trade and various illegal activities (cf. Acciaioli, 1999; Nooteboom, 2005) and turf wars are a recurring phenomenon. In the light of the Dayak-Madurese wars in West and Central Kalimantan, the situation nonetheless was one of concern to the keepers of the peace in East Kalimantan. Although all major Dayak leaders in East Kalimantan had emphasized that there was no interest in warfare among their followers, events in other provinces had put stress on ethnic relations and the authorities kept a close watch.

Early November 2005, a crisis threatened. In a fight in a bar in Samarinda the son of a Dayak *adat* leader had been stabbed by a person who turned out to be a Madurese.<sup>24</sup> The aggrieved father and family called in Dayak help and soon hundreds of Dayak from the surrounding hinterland were preparing to descent on the city armed with spears and *mandau* to seek out the guilty party. Government officials, police and the military, a fair number of Dayak among them, feared the onset of Dayak-Madurese fighting in East Kalimantan attempted to calm tempers, but the mediation of the East Kalimantan DADK *adat* leaders, who arrived in full traditional attire, was required to settle the matter. These *adat* leaders deliberated with the victim's family and determined that a customary fine would suffice to compensate for the wounding. The fine was paid to the family by either the Madurese assailant, the owner of the bar, or the municipal government; different versions of the story exist. Yet the Madurese and his accomplices –which witnesses maintained he had- had not reported themselves. Hence two Dayak *adat* leaders affiliated with the DADK carried out a magical ritual and sent a flying *mandau* after them.<sup>25</sup> Soon stories of Madurese bodies found with their fallen heads next to them circulated among the Dayak community, but I have not been able to ascertain any of these. The settlement was reputedly endangered –again this part concerns stories circulating among the Dayak community- when two Madurese were found murdered with a *mandau* lying next to them. It was well known that these were not the aforementioned accomplices at large, so their murder was most likely an unprovoked act. The police were fairly certain that the murders had not been committed with the *mandau* as the victims' wounds were caused by a smaller knife. Dayak leaders suspected a set-up as the bodies were not decapitated –as Dayak would most certainly do- and no Dayak would leave his *mandau* behind. As tensions between Madurese and Dayak mounted, *adat* leaders and KPADK officers told the Dayak to stay put and await the results of police investigations. Under tense circumstances the Samarinda police delivered evidence that the Madurese had been gang members killed by Javanese murderers hired by a rival Bugis thug. By planting the *mandau* on their victims' bodies the killers had attempted to insti-

<sup>24</sup> A number of versions of the circumstances exist. De Jonge and Nooteboom (2006:470) relate the version that is best known in Samarinda and probably the most reliable. In Balikpapan, where I was working at the time, people maintained that the Madurese together with some friends had picked a fight with the Dayak when the latter had wanted to protect a girl from their (unwanted) attention. The Dayak managed to hurt, wound or kill a number of his assailants in the ensuing fight, but was critically injured himself. This is an almost exact copy of the Dayak version of events that started off the 1996 Dayak - Madurese fights in West Kalimantan, which concerned a fight that ensued when Madurese youth harassed a Dayak girl at a concert (see Giring, 2004), and hence probably not correct.

<sup>25</sup> A *mandau* is a Dayak sword. Magically flying *mandau* have been reported in West and Central Kalimantan as well. They chop off heads by themselves. Controlling such a weapon is considered to be very powerful magic only available to extremely strong and hardened warriors.



gate riots between the Madurese and the Dayak which the Madurese, a minority in East Kalimantan, were bound to lose. This would then allow the Bugis to take over Madurese operations in the city after the mostly rural Dayak would have returned to their villages.

### Removing the governor

In autumn 2005 East Kalimantan's governor, Suwarna Abdul Fatah, had become implicated in a corruption scandal. Suwarna was accused of taking bribes in exchange for supporting the development of an one million hectares oil palm plantation in central Borneo. Groups of students from Samarinda's Mulawarman University and other protesters regularly demonstrated in front of the governor's office, demanding his abdication. Suwarna denied involvement in illegal activities and refused to step down. The police attempted to stop the unrest by arresting demonstrators.

The PDKT and many members of the DADK had voted for Suwarna in the 2003 elections yet oil palm project in question was a course for unrest among many inland Dayak groups, who considered much of the land marked for inclusion as theirs based on *adat* rights. As the PDKT was deliberating its position, the DADK swiftly made it known that they would defend any Dayak interests that might be under threat by the project. They informed ethnic Dayak members of the provincial parliament and vice-governor Yurnalis Ngayoh, a Lundayeh, of the suspension of their support for Suwarna, and requested these politicians to keep Dayak land claims at heart. The DADK intended to embark on a more activist course, but did not want to risk repercussions should things go awry. Therefore a subsidiary organisation called the United Dayak Forum (*Forum Dayak Bersatu*, UDF) was set up to coordinate Dayak actions and, if necessary, take the heat for the DADK. Suwarna's opponents called upon provincial parliament to suspend the governor, but the number of parliamentarians willing to do so was quite insufficient.

In the morning of the 16th of November the United Dayak Forum became active. Several hundred members occupied the official governor's residence, which was in the final phase of construction and not inhabited as yet. The UDF activists claimed that the mansion was being built with money gained through corrupt practices and voiced their demands for Suwarna to step down. To show that they meant business they donned red headbands in imitation of the outfits of Dayak fighters in West and Central Kalimantan and declared their intention to occupy the building until the governor was suspended (*Kaltim Post*, 17a November 2005). In a reaction, vice-governor Ngayoh called upon the PDKT to act as mediators. The PDKT chair advised the demonstrators not to damage private or state belongings such as the occupied residence, but rather seek a solution through dialogue (*Kaltim Post*, 17b November 2005). The UDF activists agreed to a dialogue, but demanded that Dayak *adat* leaders would be involved as well. The DADK, already standing by, was invited to participate.

The speaker of the provincial parliament announced that the parliamentarians were willing to assist the United Dayak Forum in its wishes, provided conclusive evidence of corruption could be provided (*Kaltim Post*, 18a November 2005). As the cases concerned were still being researched in Jakarta, the speaker asked for

the prompt vacation of the residence. The UDF occupiers, however, had gained support from a student anti-corruption action group that staged protests in front of the governor's office (*Kaltim Post*, 18b November 2005), and they stayed put in the residence. By then, the building had been painted with slogans of "this building belongs to the people" and "taken over by Dayak".



Parade of members of the DADK, the Dayak Adat Defence Command and the Menadonese Ormas Brigade Manguni, in Balikpapan, March 2006.  
(Photo by anonymous at: <http://www.sulutlink.com/berita2005/sulut60317kawanua.htm>)

On the 21st of November UDF activists outside of the residence, students and anti-corruption activists planned a mass protest in front of the provincial parliament where parliament would be in session. At the other side of town supporters of Suwarna massed for a counter-protest (*Kaltim Post*, 22a November 2005). These supporters consisted in part of local Malays and others annoyed by the high Dayak profile of the anti-Suwarna actions, but also included, as members of the provincial parliament later pointed out, hired local thugs to swell the ranks. The police allowed both demonstrations to take place, but kept the two groups strictly separated (*Tribun Kaltim*, 2005). Among the UDF supporters were various Dayak *adat* leaders and board members of the DADK in full regalia of traditional battle vests and hats. Red head and wristbands were numerous among the Dayak protesters, but no violence had place. Managed by members of the Dayak *Adat* Command, the protesters behaved in a way that gained them the praise of the police (*Tribun Kaltim*, 2005). Inside the parliament building, the parliamentarians decided to request the Minister of the Interior to suspend both governor Suwarna and the provincial secretary on suspicion of corruption, and to have them investigated by

the central government's anti-corruption commission. The speaker stated that both officials had violated their oaths of office, neglected to perform their duties and caused a crisis of public trust. Parliament appointed vice-governor Ngayoh as acting governor until the next elections in 2008 (*Kaltim Post*, 22b and c November 2005).<sup>26</sup> The decision was loudly hailed by the UDF, whose activists then vacated the premises and the governor's residence.<sup>27</sup>

### The Dayak *Adat* Command

In February 2006, the Dayak *Adat* Command was officially established in Balikpapan's main event hall. Festive singing of the national anthem opened the evening, followed by speeches and prayers by board members of the DADK. Then the Command's uniformed members were sworn in in military style and two commanders were appointed and ceremonially girded with *mandau*. Performances of various traditional Dayak dances and songs closed the evening. The occasion was festive and visited by Balikpapan's vice-mayor and various members of the provincial government, but resembled a military ceremony rather than the founding of a civil organisation. As the chair of the DADK explained to journalists of Balikpapan's leading newspaper; that was just how it should be. The Dayak *Adat* Command was there to assist the police and military in maintaining the peace and to do that efficiently they needed military discipline (*Kaltim Post*, 19 February 2006). The Command's membership reached 500 that night, and the martial atmosphere created by all these uniformed persons was further enhanced by the presence of numerous individuals in the distinctive dress of the Brigade Manguni. A North Sulawesi *adat* organisation with similar vigilante-like purposes and with local chapters in East Kalimantan's coastal cities, where many Sulawesians live.<sup>28</sup> The two organisations had entered into a strategic alliance that included a treaty on mutual assistance in case of conflict. Whereas the North Sulawesians spoke of the threat of Malaysian arrogance to both areas (*Harian Komentari*, 2007; *Kaltim Post*, 31 May 2007), the commanders of the Dayak *Adat* Command emphasized the astounding similarities of Dayak and Northern Sulawesi *adat* values. He pointed out the need for both organisations to assist the authorities who knew little or nothing of *adat* in maintaining order in the difficult circumstances of today's Indonesia. Moreover, the leaders of both organisations emphasized that people of North Sulawesi and Dayak have much in common when it comes to religion, *adat* and physical appearance.<sup>29</sup> At heart, however, the alliance is a strategic one. It means that the DADK and Brigade Manguni can mobilise some 700 uniformed and organised supporters in the cities of Balikpapan and Samarinda, more given time for members from out-

26 The procedures to appoint Yurnalis Ngayoh were first finished in Jakarta early in December of 2006. Returning from the formalities in Jakarta, Ngayoh arrived in Balikpapan at a meeting of the PDKT where he was hailed with the words: "Tonight, we have here an ethnic Dayak whom we call governor" (*Malam hari ini, ada putra Dayak yang kita panggil gubernur*) (*Kaltim Post*, 2006b).

27 Following the inquiry, governor Suwarna was indeed found guilty of corruption and sentenced to a term in prison.

28 See Manado Post (9 March 2003) or the Brigade's website <http://www.brigademanguni.org/>

29 For an interview on the subject with the board of Brigade Manguni, see <http://www.sulutlink.com/berita2005/sulut60317kawanua.htm>

lying areas to come in. Although not trained and armed to the extent of the police or military forces, this does constitute a sizeable militia.

## 7.5 Concluding remarks

All organisations discussed in this chapter present themselves as representing the interests of East Kalimantan *adat* communities. Most of them emphasize their willingness to assist the government in achieving solutions to problems involving *adat* and are quite confident in their claim that their assistance is essential, as without them the government would not stand a chance of understanding the exact nature of things. As such, these movements operate in a continuum that stretches from accosting the government for assistance, to offering specialised assistance to that same government. Can a social organisation move from a situation in which it is fully dependent on government goodwill to fulfil the targets it envisions to one in which it can become a partner to the government, engaging in an exchange or even providing services on which that government depends? When connections between social circumstances, governance and effective administration are broken down into a framework of cohesive relations of power, this approach does provide useful insights.

### Social organisations and government in East Kalimantan

The rise in the number of social organisations operating at the district level came as a surprise to many district officials who had not expected society to express such an avid interest in local politics.<sup>30</sup> However, if we see these organisations as interest groups their existence makes sense. Social activism aspiring to a voice in government affairs was highly limited and strictly controlled during the New Order, thus making the opportunity to try and obtain such influence a most welcome development. In East Kalimantan, the main grievance pertains to usage of land and natural resources by third parties with government consent, whereas the local population considered these as their property by referring to *adat* rights. Return or indemnification of such lands is an issue that all organisations discussed in this chapter address, although they vary in method and strategy. The modes of operation of the organisations in this chapter are influenced by such matters as dependency on the government, their legitimizing discourse, and their access to resources. Organisations operating independent from government resources or influence, such as the PBA and PeMa, are able to take a far more direct and confrontational course, although, like PeMa, they may choose not to do so. Organisations more closely aligned to the government, like the LAP, the DADK and Pusaka, are more limited in their functioning although in different ways. The LAP gained its position through its government origins rather than through popular support. It depended on government funding and had to work at gathering backing in society, whereas organisations usually originate in society from which they might be able to obtain

30 Personal communication district government staff in Paser.

influence with the government. Pusaka, another organisation the board of which largely consists of government officials, could have developed in the same manner. Yet as their intention to compete for the position of district head was well known, Nunukan's sitting district head preferred to keep them on the fringes of local politics as much as possible. Pusaka and the DADK also distinguish themselves from the LAP in that they do not depend on government cooperation. Both organisations have strong social legitimacy and have come to the fore addressing other resources, thus avoiding government dependence with regard to social support, legitimacy and finance, or indeed in any other field. Such independence greatly enhances these organisations' potential of operations, but it does not grant immunity. Two other factors are of major importance; *adat* and the law.

### The legal domain

Although the New Order era has been replaced with the freedom of *reformasi*, there is essentially no reason why the government could not crack down on troublesome social organisations. The *Ormas* Law and the *Yayasan* Law provide sufficient legal ammunition to find fault with most social organisations. Yet the wisdom of such a move can be questioned. If anything, doing away with these organisations would not endear the government with the organisations' supporters, who can be found in regional parliaments as well as on the streets. Most likely the operation would involve considerable unrest and dissatisfaction.

Yet the actions of some of these organisations -the PBA's assistance in settling *adat* claims or the DADK's paramilitary *adat* command's maintaining the peace and defending Dayak interests- are beyond the actions of civil society interest groups and rather remind one of the methods deployed by New Order era groups like *Pemuda Pancasila*. Even if no actual violence is used, the frequent references to the violent potential of Dayak warriors and the martial appearance of the organisations' members are certainly not intended to convince parties of these organisations' pacifist intentions. Is an indemnification for the 'illegal' usage of *adat* land obtained by a detachment of members a legal, let alone a voluntary payment, as the organisations' leaders maintain? It seems that the pressure applied has little to do with legal rights -*adat* or otherwise- and more with sheer force of numbers and the replacement of muscle groups backed by the national regime to local ones backed by social support.

However, this does not hold for all organisations. PeMa clearly moves well within the limits of the law and distinguishes itself from the others by seeking recognition of *adat* rights through the larger, national organisation AMAN which, in turn, refers to the potential of international legislation. Whereas all other organisations mobilise their discourse from such twilight zones of legitimacy as local circumstances give shape to, PeMa members travel to Gunung Lumut to discuss a United Nations draft declaration with a mostly illiterate community of forest dwellers. All organisations discussed here refer to the defence of *adat* interest in legitimizing their existence, but their differences in methods, intentions and discourses are striking.

### The role of *adat*

Most of the organisations discussed in the chapter, with the exception of PeMa refer to *adat* in two strikingly different ways. First, *adat* refers to ancient rights violated by the former, ruthless regime that must be protected and restored or redressed. Second, there are those capable of managing and judging this task for society at large and also for the government, the officials of which are deemed to be ignorant of local *adat*. Those able to fulfil this task are the leaders and boards of these organisations, who command the knowledge and social support in these matters that the government lacks. In this sense, *adat* is used to legitimize the existence of these organisations as authorities separate from the government qualified to act in a field for which those officials are incompetent. *Adat* organisations hold similar positions to *adat* leaders, but at a higher level. If their decisions are inconsistent with the notions of the *adat* population they aspire to govern, the tenability of their authority might well become an issue. Although no organisation can ignore this, the impact of this threat can be decreased by spreading the risk. In the case of the PBA, for instance, the validity of its *entero*'s claim to be Paser's supreme *adat* leader was not conscientiously proposed to all Paserese, but rather mobilised with the support of a local backing.<sup>31</sup> Initially aimed at assisting for a percentage Paserese embroiled in land conflicts with non-Paserese, the reputation was found to bring influence with the district government as well. The validity of the claim proved subservient to the manner in which, and with whom, the claim was made. The successful result then ensured the implicit support of the *adat* community in question, who found that one of their community has managed to bring the rules and rights of their *adat* close to the ears of the government. That this person is not, strictly speaking, the *adat* authority he claims to be in the local *adat* hierarchy is left aside in view of the potential of the situation.

Claims to the validity of *adat* authority are given hope considering the power relations in Indonesia today. Candidates taking Pusaka's membership oath first express their loyalty to the Indonesian state, and the uniforms of the PBA and the Dayak *Adat* Command likewise contain nationalist references next to the insignia designating ethnic and *adat* affiliations. *Adat* hence has become a wildcard that government authorities cannot parry and that can be mobilized through a number of instantly recognizable discourses. *Adat* organisations in East Kalimantan may present themselves in the best tradition of civil society NGOs, using a critical activist approach and quite likely indigenous peoples and human rights discourses to legitimize their existence and activities towards local society and government. They may also mobilize the violent potential associated with Dayak ethnicity to inspire awe and fear and come to prominence through semi-military organisations styled after the known and tried New Order era model of *Pemuda Pancasila* and similar groups. It seems, however, that the most fruitful approach is a combination of these two. The legitimacy of the first can be used to downplay the heavy-handed and illegal aspects of the second, but heavy-handedness can be reverted to when the first approach proves ineffective. An *adat* organisation with the civil society

<sup>31</sup> Pak Josef's claim to be the supreme *adat* head of the Lundaya and the silent consent of the *adat* authorities in Krayan are an example of a similar case.

methodology of democratically elected leaders who engage in dialogues with governments and other parties, yet dispose of a private strong arm. The method is not without dangers as too much militancy could well alienate the moderate among the backing as well as antagonize the rest of society. Success lies in balancing these two, thus emphasizing the broad political and social implications that these '*adat* politics beyond the *adat* community' involve.



# The politics of land 8

## Dispute mediation in Paser

If one wants to argue rights to land, one needs a argument story, support and a legal base. Not necessarily in that order. The availability of positions of authority to individuals not previously part of the established local elite has added a distinctly political dimension to regional autonomy, subjecting economically valuable natural resources and land to potential contestation. In this chapter I deal with these contestations in Paser, where the 'local arena' sees local communities, commercial plantation and mining companies, *adat* organisations and the regional government engaged in what seem to be struggles over access. Upon further analysis, however, control over land and natural resources is but one of the prizes that can be obtained. Beyond these immediate goals lie financial interests and popular support. The former is of importance to all parties, the latter is especially of value to *adat* organisations and the local government. These two are engaged in a competition over public authority and hence over political clout. *Adat* organisations invade government territory by appropriating the authority to mediate in land and resources conflicts, the government reacts by setting up its own mediation body. Thus engaging the *adat* organisations on their own ground.

As both groups are after public support for their authority, the process of land conflict has come to include elements of forum shopping, cool strategic calculation, and displays of authorities' involvement that range from one's controlled and benevolent presence at the scene, to passionate involvement. Some of the actions contain illegal elements, and many involve carefully laid plans, scheming and –in one instance- infiltration.

In this chapter I explore the political dimension of such non-judicial out-of-court mediation of *adat* land claims in Paser. I focus especially on how the balance of power is given shape outside of the offices of the regional government, the parliament, and the district court. Here Paser's main *adat* organisations the LAP the PBA compete with the district head in providing the best solution and gaining the people's favour. The 'best' solution is neither necessarily simple nor straightforward: what is best for a local farmer may not be so for the district's economy, and what is best for the economy may not be so for the mediator's reputation. Alliances are wrought and broken, but all parties unite when the conflict is with competitors from the neighbouring district. Mediation of *adat* land claims is a political arena where parties can display their skills. The public watches, and supports its favourite after the display.

### 8.1 Filling a vacancy

Pak Ibing from Long Ikis is locally known as a colourful person. An old man who has lived in the village for all of his life, he is unafraid to speak his mind on local affairs.

Some of the villagers consider him to be a community leader (*tokoh masyarakat*), but for others he is too temperamental. In 2004, Ibing led a group of Paserese villagers in bringing a case against an oil palm plantation company before Paser's district court. The villagers maintained that the company illegally used their *adat* land and demanded a return of the land and compensation for its usage so far. The company subjected to their claim, PTPN Sawit Indonesia, is substantially the largest oil palm company in Paser.<sup>1</sup> It is a state company under the auspices of the National Plantation Department in Jakarta.

The villagers from Long Ikis carried out some limited actions. They occupied the disputed plot for one morning, preventing plantation workers from entering, and demanded to have the plantation's director meet them there to discuss their demands. When the director failed to appear, most of the squatters grew bored and returned home on the pretext that they had made their point and had other concerns to attend to. The next morning Ibing returned for another few hours of plantation occupation. Armed with a spear and machete, he guarded the land against intruders and had his picture taken by villagers and plantation workers alike. A few young men tentatively spoke about putting up a barricade, but some of the elders discouraged the idea and suggested they await the district court's decision without creating too much of a fuss.

The court heard the witnesses, among them Ibing, and took into account the historic tales of specific families' land usage with which the *adat* claims were illustrated. The leading judge, a young Javanese, listened to the lively stories with great interest before posing the question of whether the Paserese families happened to possess any land certificates or other official documents that could substantiate their claim. As it happened, the plantation management had submitted copies of land certificates issued to the company by Paser's National Land Agency, and the judge feared that a case of double certification was forthcoming. His fear proved ungrounded when it became clear that none of the Paserese had a certificate. The court thus wasted no time in reaching a decision according to a strict reading of Indonesian land law that is often applied in such cases: the Paserese had no basis for their claim and their request was denied.

Afterwards the chairing judge expressed his surprise: he had not expected people to bring a case before the court without any legal proof to substantiate their claims. Land cases are few in Paser's district court, but those that do take place always involve NLA certificates.

The judge's remark about land certificates pinpoints the underlying reason for this chapter's subject. It is widely known in Paser that there is no point in bringing a land claim before the district court if one does not possess relevant documents. A few individuals have tried it in the past, appealing to *adat* and to history, but none have ever won their case. This led to the popular understanding that land claims without certificates should be dealt with outside the court. This has two major disadvantages: first, the Paserese population concluded that the authorities did not take their *adat* claims seriously. Trans-migrants, plantation companies and mining

corporations were nearly always issued land certificates upon settling in Paser, whereas indigenous Orang Paser had to apply for certification themselves and bear the expenses. Second, the conclusion did not improve the court's reputation in general. Courts of law throughout Indonesia have a reputation of deciding in favour of the party that pays the highest bribe, and by popular association Paser's court shared this image of their professional group. The court's refusal to consider *adat* to be a sufficient ground on which to award a land claim served to further strengthen this reputation.

Whereas Indonesia's legal system provides its courts of law with the authority and legislation to resolve land conflicts, the blind spot for *adat*-derived claims posed a major problem to large parts of the population. When *adat* organisations rose to prominence following *reformasi* and became influential in the regions, they demanded attention for the position of *adat*-based land claims. In some districts, Paser among them, *adat* organisations went further and actively began to support *adat* parties in lodging claims against non-*adat* defendants without referring to the district court or national law in any way. With an *adat* leader as judge, the decision would often be the opposite of what a district court judge would rule. *Adat* organisations' mediation in *adat*-based land claims thus became a popular alternative to court decisions.

## 8.2 A company operating beyond its boundaries

In 2001, a serious land conflict brought the previously quiet backwater of Paser in the headlines of the national newspapers on a regular basis. For more than a year, the population of ten villages and PTPN Sawit Indonesia had been at odds over the rights to a part of the latter's plantation. The villagers claimed that the area was *adat* land belonging to them by customary right, and threatened to occupy the land. They had no certificates but had strength in numbers. Local estimates suggested there were 4,000 villagers and sympathisers.

Paser's district head of the time, Yusriansyah Syarkawi, was reluctant to have the villagers driven out. East Kalimantan, and notably Paser, had been peaceful for decades and local police intelligence estimated that such actions would spark unrest and possibly violence.<sup>2</sup> The situation in the district was tense. Disputes over land ownership had been building for decades as Orang Paser felt indignant over the casualness with which district authorities awarded rights to Paserese *adat* land to migrants and outside companies. Should fights break out, the police feared, there was no telling whether Paserese would use the occasion to drive out the migrants. Although the police commander had agreed to do nothing at the time, district headquarters had two mobile brigades (*brimob*) standing by.

<sup>1</sup> PTPN Sawit Indonesia is not this companies' actual name.

<sup>2</sup> An officer told me how he felt that the "hinterland had watched, and might well have wanted to join in a fight" (*yang di pedalaman melihat kami dan mungkin ingin berperang*). As Dayak-Madurese fights taking place in the provinces of West and Central Kalimantan were still going on, violence in East Kalimantan was to be avoided. No district head or police commander wanted to have fighting in East Kalimantan start under his command.



The Paserese, however, were not interested in a fight, but in land and income. They maintained that the oil palm company only had permits to operate on the land of two villages, and had steadily extended its activities illegally onto the land of the other eight (*Kompas*, 6 January 2001). They proposed to the district government to let them operate the illegal plantation land under a smallholder cultivation scheme (PIR).<sup>3</sup> Such a scheme would help secure the villagers the desired land ownership rights, and the land would remain state land if the rights lay with the company. The families who would work on the plantation would receive thirty percent of the harvest during the first eight years, which would become a hundred percent afterwards. The villagers would commit themselves, however, to sell the full harvest to Sawit Indonesia for production. Paser's government was willing to agree to the proposal, as was the local PTPN Sawit Indonesia management, but as the company was a state-owned one, it needed the consent of its Jakarta superiors.

The plantation ministry, from its side, was slow to reply. On 17<sup>th</sup> May the villagers denied PTPN Sawit Indonesia's workers entry to a plot of 2,400 hectares and kept up a steady blockade. It became impossible for the company to harvest on that plot or maintain its trees. The houses of (mainly migrant) workers living on the terrain were sealed by the villagers, forcing the inhabitants to find shelter elsewhere. In early June a company representative from Jakarta hurried to Paser for a meeting organised by the chief of police, but there was met by a few people from two of the villages only. The majority wanted the meeting to be chaired by the district head or the provincial governor rather than by a police official. The representative's main news was that the company was willing to agree to the PIR scheme but had to await an official decision by the central government, which, the representative thought, was in the pipeline (*Kompas*, 9 June 2001).

Two months later the conflict appeared in the national daily *Kompas* (28 August 2001) for the last time. The article related how the plantation was suffering from neglect and the workers had moved away in search of other work. The processing plant at the location had had to shut down because it could only process the oil palm fruits from local farmers working under earlier PIR schemes, which used only twenty-five percent of the plant's capacity and made operating extremely expensive. The *Kompas* article gave ample attention to Syarkawi's comments on how the problem had been haunting him almost since his appointment as district head and he really wanted to see it settled. Indecisiveness or indifference in Jakarta, where he had gone to discuss the issue with central government officials, as well as stubbornness by the local population, had killed the plantation off, Syarkawi felt.

Although eventually counterproductive to the local economy, the blockade of the plantation was a clear statement of the relevance of *adat* land claims in the eyes of the Paserese population. Yet Syarkawi's government did not pick up on this and chose to steer away from recognizing *adat* land claims. He feared that recognition would further damage the district's economy as plantation companies would

feel their interests were threatened and abstain from further investments or new operations in Paser.

Paser was one of the few districts where the government enacted regulation 5 of 1999 by the Minister of Agrarian Affairs/Head of the NLA on the existence of *hak ulayat* in the regions.<sup>4</sup> In an attempt to clarify the status of communal *adat* land in Paser and avoid further unrest, Syarkawi invited the Universitas Hasanuddin from Makassar to start up a research project in early 2002. He hoped that the government's willingness to consider local claims against the conditions formally established in the ministerial regulation would restore calm to the district. In August a combined team of university scholars and district government personnel undertook to establish the existence of *hak ulayat* in Paser. Having gathered fieldwork data in several areas, the team concluded that no *hak ulayat* could be found in the district. A draft district regulation to this effect was formulated in 2003 and presented at a public meeting later that year. It caused an uproar of protest from the population and the *adat* organisations. Whereas the former saw the hard-fought attention for *adat* seriously threatened, the latter rose to prominence. When, in the spring of 2004, the protests did not seem likely to die down, Syarkawi decided to shelve the entire plan until after the district head elections early in 2005.

It would be going too far to say that his handling of *adat* land claims and the *hak ulayat* affair caused Syarkawi's failure to be re-elected, but they certainly contributed to it. In a broader context, Syarkawi's term in office was burdened by Indonesia's economic crisis, which translated into disappointing palm oil prices locally, and the secession of Paser's northern lands to the new district of Paser Utara Penajam in 2002. The popular feeling was that the district was not governed by a strong leader, and Syarkawi was to face the consequences.

### 8.3 The government to the fore

The question of *adat* land had put the LAP and the PBA in prominent positions. Ishak Usman, the leader of the LAP, had begun to distance his organisation from Syarkawi during the *hak ulayat* upheaval despite the LAP's official association with the district government. Usman decided to take the plunge and stood for the position of vice-district head himself, teaming up with a candidate district head. Focussing on the Paserese as well as on the rest of the population, Usman found himself trying to emphasize and play down his public role as a champion of local *adat* rights at the same time. The PBA, no friends of the LAP at the best of times, meanwhile delighted in pointing out the LAP's link to the government and Usman's personal involvement as a civil servant employed in one of the district services.

The PBA initially refrained from supporting any candidate. Their strategy was to defame specific candidates (notably Syarkawi and Usman) and emphasize their own objectivity and independence from local politicians. Repeatedly approached to pronounce their preference, the PBA issued a statement to the press in which

<sup>3</sup> Smallholder cultivation schemes consist of a nucleus formed by a plantation company and smaller village plantations (Plasma) that are set up with financial support of the company. The company is entitled to buy the villagers' harvests. As the company Banyak Sawit (a pseudonym) owned all oil palm processing plants in the area the villagers had little choice but to opt for cooperation, but their choice of making the first proposal gave them the initiative.

<sup>4</sup> The regulation is briefly introduced in chapter 4, while its implementation and ensuing events are discussed at length in chapter 10.

they declared all candidates extremely well suited for the position and recommended that the people of Paser would make their own choice (Kaltim Post, 29th October 2004).

Shortly before the election date, when interim polls and low-profile discussions had provided some indications of likely outcomes, the PBA came out in support of Hatta Gariet, a candidate for the position of vice-district head and the running partner of Ridwan Suwidi. The Suwidi-Gariet team won the elections. Ridwan Suwidi was in a good position to appeal to Paser's population. Born to immigrant parents but raised in Paser, he could associate with both immigrants and Orang Paser. He was a devout Muslim, which is important in religiously observant Southeast Kalimantan. Although in his seventies, he was an athletic and energetic man whose eloquence in discussions and speeches compared favourably to those of his competitors. Suwidi had gained extensive political experience as a former member of East Kalimantan's provincial parliament and a reputation for championing the rights of the poor and the indigenous population.



Election poster for Aksa Arsyad and Ishak Usman as district head and vice-district head of Paser 2005-2010

Together with Gariet, Suwidi visited villages and hamlets throughout the district and had long and intense discussions with local notables and simple farmers alike, promising that if elected, they would focus on improving the lives of Paser's masses rather than obeying the whims of the large companies.

Promises made during election campaigns are often among those most easily forgotten, but once elected Suwidi proved attentive to the needs of the population. His fame quickly spread when he announced that those having a problem that they felt the district government could relieve should come to his office, or, if

this proved impossible during the day, visit him at his house at night. A few tentative attempts were made, and when it became clear that ordinary villagers could indeed speak to the district head, the usually empty entrance of the district head's office became crowded with a lively mass of farmers, workers and villagers of all ages and positions sitting around and talking to one another. More people sat inside patiently awaiting their turn while secretaries attempted to create a schedule out of the mass of people.

Suwidi received individuals and delegations in his office while the crowd moved to his official residence during the evenings and the weekends. There, discussions would continue well into the night.

Land claims were a recurring theme during those meetings. Having picked up the issue's sensitivity, Suwidi and Gariet had decided to ignore the draft regulation on the absence of *ulayat* in Paser. Recognizing the practical problem of involving the district court and not wanting to put their faith in the hands of the *adat* organisations, the pair decided upon an alternative course of action. Land conflicts would be mediated by laymen who kept the welfare of Paser's society as a whole in the back of their minds. They introduced a new conflict resolving body consisting of civil servants of the public administration division (*tatapraja*) of the district head's staff.

## 8.4 The choice for public administration

Public administration is one of a number of divisions of the district head's office. Basically all of these rest under the district secretary, who in turn answers to the district head and vice-district head. The various divisions are grouped under assistants to the district head. In the case of Paser there are three such assistants, the first of which heads the public administration and legal divisions.

The tasks of the public administration division can be broadly described as studying, developing, implementing and reviewing district government policies, and advising the district government when this is deemed necessary. On the whole, the division works relatively independently and is expected to use a reflexive and holistic approach.<sup>5</sup>

Even before decentralisation it was the task of the public administration division to study and report on the impact of the district government's policies. Yet, as individual staff members pointed out, their work depended on the interests (or lack thereof) of the district head in the actual effects of government policy. It had happened in the past that the division was not called upon for weeks at the time.

Decentralisation attributed an important role to the public administration staff and their colleagues in the legal division. Together they were responsible for understanding and implementing the responsibilities and authorities of the regions, as set out in the 1999 and 2004 decentralisation laws. For the larger part of Syarkawi's term as district head (2001-2005), the public administration personnel was engaged in studying these laws and advising on their implementation, leaving

<sup>5</sup> During my first visit the public administration staff could not provide a written down task description for their tasks. At a later visit they provided me with a copy of a 1989 South Sumatran district regulation to which they had made some adaptations to suit their work. The result is included in this book as appendix I.





A poster issued by the Indonesian Museum of Records congratulating Ridwan Suwidi with his election as the oldest Indonesian district head ever.

little time to consider the actual effects of the policies. The officials were aware of conflicts, such as the PTPN Sawit Indonesia plantation dispute discussed above, but were not involved in settling them.

When Ridwan Suwidi came into office, he found Paser's oil palm sector in a deteriorating, and indeed already poor, shape. Although Syarkawi had managed to prevent escalation of the PTPN Sawit Indonesia conflict, his government had not been able to solve the problem. The blockade had paralysed a considerable percentage of the plantation while its unopposed continuation made oil palm companies hesitate to make new investments in the district. As many trees in the

older plantations had passed fruit bearing age, Paser's plantations were in need of replanting with young palms in order to guarantee a continuation of the district's main agrarian product.<sup>6</sup> PTPN Sawit Indonesia was not interested in full replanting and new investors proved hard to find.<sup>7</sup> Suwidi applied for assistance to the central government in Jakarta and managed to convince the National Plantation Department to act as guarantor for a bank loan to Paser. The money was to be used to revitalize old plantations.<sup>8</sup> It would be made available as loans to the local population to replant 20,000 hectares of oil palm and 10,000 hectares of rubber trees under a smallholder plantation (*kebun rakyat*) scheme intended to prevent further conflict and stimulate stability in the district.

The public administration division was found to be an ideal vehicle for monitoring the implementation of these as well as other, private, new plantation projects. Its staff was also tasked with preventing new conflicts and solving those still in existence. Three officials were given the additional task of monitoring the plantation economy and solving land conflicts.

Although this intensified attention for plantations and land conflicts was successful in that the plantation sector regained its stability, it brought forth an unexpected number of *adat* land claims. The extended PTPN Sawit Indonesia blockade had encouraged the Paserese population group to voice their complaints now that a district head willing to consider *adat* claims was in office. Assisted by the PBA and related local organisations, that is what they did.

## 8.5 Negotiating land: review cases

The district court judge who had presided over Ibing's court case was highly interested in the deployment of the public administration staff. He understood their potential for dispute settlement and preventing further unrest. As relatively unknown authorities, they suffered less from negative association than the district court judges did, the judge felt, and the population would be more objective in considering their arguments. Nonetheless, he emphasized, the officials would have to work within the limits of national land law as much as the court did, and that would hamper their possibilities as much as it did those of the judges.

As a legal professional he was looking forward to seeing the public administrators' achievements with great curiosity. As a judge, he felt, he lacked the means to engage in extensive negotiation with parties. His job was to take a decision according to national law. As the public administration staff had no judicial authority whatsoever, its forte would be to apply their common sense and educated outlook to the peasant protests. As we were discussing these issues in his chambers, he asked me to convey to the public administration team that they could refer to the deciding power of the court as an incentive to *adat* parties to collaborate in find-

<sup>6</sup> After a number of years, often from fifteen to twenty, oil palm trees stop bearing fruit.

<sup>7</sup> Anonymous sources told me that at the time the company's board considered evacuating Paser in favour of other districts with a less hostile population and a more energetic government.

<sup>8</sup> The first two years of Ridwan Suwidi's term are discussed at length at [sadurangas.net](http://sadurangas.net), a discussion forum with Paser as its subject. See for instance <http://sadurangas.net/modules.php?name=-News&file=article&sid=69>.

ing a solution, and that he was willing to visit as a sullen judge if difficult meetings demanded stern measures.

The judge had not shared his opinion with the public administration personnel, but their staff had already come to appreciate the value of referring to the district court as a means of persuasion. Practice had taught them that it was best to do so only in an advanced stage of the discussions. After several days or weeks, when both parties had already yielded some ground and a successful outcome seemed possible, reference to the court could provide the little extra bit needed to reach an agreement. “In a way,” one of the public administration officials told me, “we are like wedding brokers. There is a lot of giving and taking. Both parties feel highly important and want to be treated as such, but in the end we all want the wedding to take place.”

The district court judge could understand Paserese grievances and actions such as the plantation blockade. “But,” he pointed out, “Our law just does not work that way. There is one national legal system and it requires proof before *adat* land claims can be considered as property. Whether people like it or not, that is how it is.” In the view of the judge, many *adat* communities were then making good their claims by terrorizing (*diteror*) plantation companies into paying indemnifications and urging migrants to depart from ‘their’ lands. Neither national land law nor the police could effectively solve this problem, he felt, so despite all practical objections and legal limitations, deployment of the public administration team would be an interesting experiment in administrative authority.

The following three examples illustrate the diversity and comprehensiveness of the cases that the public administration team have to deal with. They range from the sequel to Ibing’s earlier claim in which a public administration official reviews the case again, to a case involving coal mining company accused of stalling the public administration team’s attempts to restore calm until dealt with by the district head, to the problems the officials are confronted with when outside money is involved.

### 8.5.1 The return of Ibing

Ibing and his fellow villagers could not find it in themselves to accept the district court’s decision. They felt that the case was clear, and clearly the court had ruled wrong. Years ago the villagers were asked by district authorities to give up part of their land to accommodate a group of trans-migrants. They agreed, as the requested land lay at the edge of the village’s *adat* territory and was quite remote from where the actual village was located. The migrant families arrived and diligently laid out gardens and rice fields. They prospered, and decided in the mid-nineties that they wanted to expand their agricultural activities to include market-oriented production. The migrant community proposed to the district government to clear additional forest and tie into the palm oil industry by establishing a smallholder oil palm plantation (*taman rakyat*). They approached PTPN Sawit Indonesia for financial and material assistance. The company offered to provide the necessary oil palm sprigs in return for the exclusive right to buy the oil palm fruits, to which the

community leaders agreed. Migrant spokespeople claim that they asked for, and received, permission to clear forest from the village head of Ibing’s village. They did, however, not have it in writing.

When, some ten years later, Ibing and his fellow villagers summoned PTPN Sawit Indonesia to appear before the district court, Ibing stated that the village head had not given permission to clear the forest. Moreover, the village head would not have had the authority to speak for the *adat* community of Ibing’s village, who had possessed the land for generations. The land that had been cleared for the migrants’ plantation was the location of a number of former fields to which people still had rights. The fields were easy to locate as the original users had marked the borders with fruit trees, as was the custom in the area, which were still standing.

The defence argued, successfully, that the fruit tree border was very vague. Indeed numerous fruit trees had been felled for the plantation, while many others in the wide surroundings remained standing. Over the years wild animals had dispersed fallen fruit, and new shoots grew up throughout the area in a haphazard way. Who could say where the border used to be? Its location was impossible to discern, especially by someone unaware of its presence. Also, the defence pointed out, it was odd that Ibing only came forward with his claim now that the forest was cleared, the oil palm was planted, and the trees were almost old enough to bear fruits. In other words, all the necessary work and investments had been done and the demand came to just hand it over. The defence thought this rather rich.

Ibing pointed out that it was only now, after *reformasi* and with the new district head, that *adat* claims stood any chance of being honoured, but the judge was not convinced. Ibing and his fellow villagers, the judge pointed out, were claiming communal *adat* land, in other words *ulayat* land. This had just been proven not to exist in Paser by the combined government-university research team. How can something that does not exist be claimed? In addition, the judge pointed out, the usage of the land as a communal oil palm plantation by a large community of migrants had more general interest than handing it to Ibing’s small group of people. Combined with the decisive factor that Ibing did not have any documentation whereas the migrants did, Ibing lost the case, as noted above.

Not accepting the decision but tired of the whole situation, Ibing decided to let the case rest. Yet some of his younger supporters did not agree with this outcome and stepped forward when he stepped back. They appealed to the district head to look at the case, and the public administration division sent Adi, a young Paserese official, to look into the case. In a series of discussions the young leaders and the returned Ibing tried to convince Adi of their rights to the land. The main problem, Adi, pointed out, was that the claim was made for the first time now that the first fruits were almost ready for harvesting. No one, not even in their own village, had utilised much of the plantation before, although they must surely have known of it. Not receiving a satisfactory explanation, Adi reported back that the timing of the claim, its vague history and the limited number of claimants made the demands seem opportunistic and untrustworthy. Adi warned the villagers that *adat* based claims should be well-substantiated and widely known, which this one was not.

The timing of the claim, which indeed seems opportunistic and is not adequately explained by the claimants, as well as the limited number of people claiming

knowledge of the *adat* land right, means that the case can be considered to be a hoax. Depending on the species, oil palms take a minimum of three years to start bearing fruits and it seems unlikely that no one noticed the trees during that period, or indeed that the planting lead to no public discussion in the village. Furthermore, the fact that the claimants summoned the oil palm company, rather than the migrants who had committed the alleged illegal occupation, could be seen as an attempt to ‘go for the gold.’ PTPN Sawit Indonesia was in a more vulnerable position. It was still involved in the conflict with the ten villages and needed palm oil fruits to maintain its production. Whereas the migrants were the neighbouring community and to take away their economic assets would immediately sour relations in the district, to address the anonymous oil palm company would not cause such social tensions.

### 8.5.2 Fishing for coal boats

Adang Bay is Paser’s largest coastal inlet. It has a length of around fifteen kilometres and a maximum width of almost ten kilometres. Three of Paser’s major rivers flow into the bay at various points, forming a wide estuary that penetrates deeply inland. The water along the bay’s banks is shallow and runs out into extensive mangroves and marshlands – a hatching ground for fish and shrimps. Many of the inhabitants of the main villages along the bay, Paser Mayang and Air Mati, make a living as fishermen. Yet, Adang Bay also functions as the loading point for the large barges used to transport the coal mined in Paser out of the district. The barges – big, square, open lighters – cannot come close to the shore and remain in the deeper water of the bay’s centre. Smaller boats ferry the coal from the docks to the barges twenty-four hours per day.

In October 2005, fishing boats from Paser Mayang and Air Mati occupied the bay and prevented the coal barges from departing or entering. The fishermen claimed

that the continuous activity in the bay had decreased the fish stock. For years the fishermen had circumvented the problem by ever extending the time they spent on the water to maintain their income, but this was proving untenable. Diminishing stocks made maintaining catch quantities all the more difficult, and the continuous decline forced the fishermen to request financial assistance from PT Batubara, an international mining company that was the major coal entrepreneur in the area.<sup>9</sup> As the miners’ frequent



<sup>9</sup> PT Batubara is not this companies’ actual name.

nautical activities disturbed breeding activities in large parts of the bay, the fishermen reasoned, the company was responsible for their loss of revenue.

The fishermen felt entitled to financial compensation. Whereas Paserese farmers claimed *adat* rights to land, Paserese fishermen maintained *adat* rights to the bay’s fishing grounds. A delegation went to speak with the company’s management but was not given any commitments. The management was not convinced that their ships were responsible for the diminished catches and was unwilling to take responsibility. Besides, they argued, they had already financially supported the villages on various past occasions and could not be expected to do so every time. The fishermen decided to bring their claim before the district court.<sup>10</sup>



Coal barge being transported along Paser’s coast (photo: J. van den Ploeg).

At the first summoning the mining company failed to appear. At the second, a week later, a representative of the company attended, but not in a legal capacity. A discussion took place in which the representative maintained that there were no grounds for the fishermen’s complaint as the company possessed all the required permits and had no obligations towards the villages. In case the fishermen wished to continue with their claim, the representative added, they should contact the company’s main office in Jakarta. The management based in Paser was not entitled to decide such matters independently. Upon receiving this information, the district court judge ruled that his court was incompetent to decide the case. As PT Batubara was formally based in Jakarta, the case had to be brought before the relevant municipal court there.<sup>11</sup>

<sup>10</sup> See *Tribun Kaltim* (28th October 2005) for a presentation of the claims.

<sup>11</sup> In fact this had happened before. 2003 the East Kalimantan government and the district government of Paser had summoned the mining company to appear before the municipal court in Balikpapan (see *Kaltim Post*, 4 July 2003) and had been given the same result by that court’s judges.



The next day the coal barges found their way blocked by numerous small fishing boats from the two villages. In the run-up to the court appearance two villagers had formed an organisation to organise the fishermen and represent their interests to other parties. These two men now visited the district government's office to explain their action and request assistance. The fishermen feared that PT Batubara's management would ignore their demands now that the district court had referred them to Jakarta. As simple village fishermen, they neither had the means, the confidence nor the knowledge to travel to Jakarta and accost the capital's bureaucracy. Unwilling to renege on their demand, the fishermen had decided to attempt to force the mining company to cooperate, but they felt they would need all the help they could get. The public administration division's head, who had spoken to the fishermen on behalf of the district head, promised to look into the matter.

The blockade was left in place for two days but was eventually ended by the police in a rather subtle way. One person was arrested from each of the two villages (not the fishermen's leaders), brought to the police station, instructed to tell the fishermen to end the blockade (since otherwise outside police would be called in as the mining company had lodged a complaint), and then returned to their village.<sup>12</sup> The blockade was duly lifted.

Adi, of the public administration, was instructed to go to the scene and attempt to start a dialogue between parties. This proved a tough task. PT Batubara's management emphasized their lack of authority and kept referring both the fishermen and Adi to its Jakarta headquarters, while the fishermen's organisation presented the management and Adi with calculations showing that each family suffered a yearly loss of between 1,500,000 and 2,500,000 rupiah.<sup>13</sup> This was an amount that made Adi wonder: judging by the heights of the losses all villagers had been fishermen bosses and fish dealers, what had happened to the ordinary fishermen?

In previous sessions the company management pointed to the fact that it was not only they, but also various smaller companies, that ferried coal to the barges as well. They maintained that a recalculation specifying the shares of the various companies involved would be required. They also informed the fishermen and Adi that the company's lawyers in Jakarta had established that, as PT Batubara was a foreign company, it might well be necessary for them to refer to international law rather than just Indonesian legislation. This would postpone a court decision for a considerable period of time.<sup>14</sup> Adi and his colleagues gained the appreciation of the fishermen when they established that the small mining companies to which the management referred were in fact sub-contractors of PT Batubara. A specified recalculation was hence unnecessary. Furthermore, Adi informed parties that the district was developing new legislation that would no longer allow conces-

sionaires to sub-contract their concessions.<sup>15</sup> The management took it all in, but refused to budge. The fishermen concluded that the mining company was stalling. Without informing Adi, they reacted by targeting the barges' loaders. Fishing nets were cast along the loaders' route from the docks to the barges, creating a maze for the boats to navigate. When the nets got caught in the loaders' screws, the waiting fishermen demanded a compensation of several times the actual value of the net. The captains of the coal loaders paid up to avoid trouble with the numerous fishermen, but got caught between parties when PT Batubara's management made it clear that they would not refund their captains as they considered it sheer blackmail.

The public administration staff needed to spend considerable time on just keeping parties on speaking terms. In February 2006, Adi and his colleagues managed to persuade the parties to agree on a laboriously established armistice which had the loaders' boats supplying the barges during the day, but refraining from nightly activities. The reasoning behind it being that this would give the bay's fish population time to re-establish itself.<sup>16</sup>

Not much progress was made in solving the conflict, however. As a staff member of Adi's team remarked, the interests of PT Batubara and the fishermen were almost opposite. Both were looking for profit, but through mutually excluding activities. In May 2006, Ridwan Suwidi, the district head, became personally involved in the matter. Vexed that the conflict continued, he organised a meeting with the mining company's sub-contractors and several of its national board members, who came over from Jakarta. He publicly presented them with copies of a new district regulation instructing companies working in Paser to have their work force made up of a specific percentage of locals and stated publicly that he hoped that PT Batubara and the district population would have a long and fruitful future of cooperation (see *Kaltim Post*, 16 May 2006). A few days later, some 1,000 local people held a protest march against the mining company, protesting its limited interests in the welfare of the population and demanding it closed down its operations.<sup>17</sup> Although PT Batubara's local management was swift to point out that the company had donated billions of rupiah to community projects since it began operating in Paser, the spokesperson for the organising NGO Abdi Nusantara Kabupaten Paser, maintained that the company should focus on relevant issues, such as the percentage of Paserese in its workforce (*Kaltim Post*, 22 May 2006).<sup>18</sup> The mining company

<sup>12</sup> One reason for this was the role of the sub-district head of Paser Mayang, who was a retired police officer and supported the fishermen.

<sup>13</sup> Accounts by various informants indicate that the PBA was advising the fishermen's organisation at this stage.

<sup>14</sup> Indonesian law is perfectly suited to deal with problems regarding international companies operating in the country. It seems likely that this information was given to discourage the fishermen from further action and, possibly, to accept an offer to settle that PT Batubara could make soon afterwards. Last phrase is unclear.

<sup>15</sup> I have found no evidence of such legislation being promulgated. It does not, however, appear likely that Adi only made the suggestion to put pressure on PT Batubara's management, since staff of Paser's law department confirmed work on such legislation during another, unrelated, interview.

<sup>16</sup> Obviously this was just the official reason. As the fishermen could do little but physically hamper PT Batubara to maintain its attention, they tended to revert to blocking actions, which were however illegal. Their demand to have only limited activity in the bay in order to spare the fish population was creatively invented and at least as effective. The bay was now as good as blocked during the night; limiting PT Batubara's working hours with around forty percent.

<sup>17</sup> Various informants mentioned the PBA as one of the organizers of the protest, but their leader did not want to confirm this officially.

<sup>18</sup> Abdi Nusantara Kabupaten Paser is not otherwise known to me. Again informants suggested PBA influence, but one of the NGO representatives pointed out that a board member of PeMa (a small *adat* NGO from the Gunung Lumut area, aligned, but only half-heartedly, to the LAP). The personal history of this person with the PBA ruled out any cooperation between the two.



agreed to give priority to Paserese candidates for its workforce, possibly inspired by Ridwan Suwidi's new idea of requesting an annual voluntary contribution to the district treasury from each company working in Paser (*Kaltim Post*, 31 May 2006). Relations with the district government had become strained by PT Batubara's unwillingness to actively help Adi and his colleagues solve the conflict, which could damage the reputation of the new policy. PT Batubara's commitment to prioritise Paserese when recruiting had not fully placated the district head, as indeed the head occasionally made clear. One instance of this was in September 2006, when he publicly suggested that the district could always start cooperating with another mining company, if the population so desired (*Kaltim Post*, 4 September 2006). All in all, Suwidi's suggestions have had considerable effect. PT Batubara has stepped up its support programs to include road construction, school building and various other mainly non-financial contributions in the wide area of the Adang bay.

'Fishing for coal-boats' was a jovial description among the fishermen who put out their nets to entangle the boats loading the barges. The district government techniques were, however, not so different, as both attempted to get the most out of an uncertain and, in any case temporary, situation. Although another mining company could always be found, the district government did not have all the authority it claimed to have. The authority to give out concessions to operations the size of PT Batabura's lies with the national mining department in Jakarta. In part, Suwidi was bluffing. However, the company had to deal with its public image and with the spectre of more blockades looming on the horizon investing in public goodwill certainly was a sensible move. The main success of the public administration staff lay in preventing matters from getting out of hand and maintaining a popular image of the district government as being on the side of the population. In the event, the issue benefited the district treasury and the government's public image, but as far as I am aware no further indemnifications have been paid to the villagers of Adang Bay.

### 8.5.3 Palm oil borderlands

Borders are crucial factors in establishing land rights and are hence frequent subjects of dispute, as are the maps that depict them and the permits that describe them. Many of the cases in which Adi and his colleagues at Paser's public administration division were engaged revolve around borders. The obvious question is which border is correct, but the essential question is who has the authority to establish them.

In 2005, PTPN Sawit Indonesia negotiated with the inhabitants of the village of Luan about the establishment of a new oil palm plantation. The plantation was to be located on a stretch of 2,000 hectares of village forest land. The size of the plot would allow the district government to give Sawit Indonesia a usage right (*hak ai* or *hak guna usaha*) to the land for twenty or thirty years, which meant that no permission would have to be gained from Jakarta-based departments and the procedure could be concluded swiftly. The new plantation would provide jobs to the villagers and Sawit Indonesia would compensate them for the forest gardens that

would have to be cleared. A conflict arose when inhabitants of the neighbouring village of Lempesu learned of the plan and insisted that a considerable part of the land to be used lay on their territory, while villagers from the nearby village of Suweto maintained they had rights to part of the land on Luan's side. The villagers of Lempesu stated that the Segelau river marked the border between the two villages but those from Luan disputed this, claiming they had land on Lempesu's side of the river as well. The map provided by Sawit Indonesia showed the 2,000 hectares to go beyond that river and include land on the side of Lempesu. The border between the villages had never been officially established, so there was no other map to work from. When the heads of the two villages met in order to discuss the problem, they could not find a solution and appealed to the public administration staff for help.

Adi travelled to a meeting in Luan and was taken aback. Angry people from all three villages were shouting at one another while Sawit Indonesia representatives were arguing with all sides. Adi had to climb on a table and shout to get everyone's attention. The first thing he did was to request the plantation representatives to leave since, as he put it, "they were outsiders and this was something to be settled among Orang Paser." They left grudgingly. He then proceeded to tell his audience that it would not be possible to settle the issue that day, but that he and the rest of the government would like to start by looking at the map. Officials from the district National Land Agency office compared PTPN Sawit Indonesia's map to their own maps, and found the scale of the company's map to be quite wrong. The land marked as 2,000 hectares on the company map measured far more than that on the NLA maps. This united the Paserese villagers somewhat against Sawit Indonesia.

Next, the border between the villages needed to be determined in which the NLA personnel would assist by drawing maps. It soon became clear that *adat* was the basis for the villages' territorial claims. Not having sufficient *adat* knowledge themselves, Adi and the other government staff called upon the LAP to assist them. Its leader, Ishak Usman, was well-known in the area where Luan and Lempesu are located due to the election campaign and he invited delegations from the villages as well as *adat* experts from neighbouring villages to come to his house in Tanah Grogot to discuss the matter.

It was established that the river indeed formed the border of the *adat* territories, but that several generations ago people from Luan had received permission from Lempesu's community to lay out fields on Lempesu's side of the river. This had inadvertently caused the impression in Luan that the land nowadays belonged to them. After discussing the issue, the parties agreed that the land belonged to Lempesu, but families from Luan had usufruct rights. When the plantation was established, these usage rights would revert to Lempesu. In a similar fashion, people from Suweto no longer lived in Luan but could claim rights to land there because their ancestors had lived in the area several generations back.

At the instigation of Adi, an agreement was formulated in which a third of the new plantation would be located on Lempesu's territory, and two thirds on that of Luan. The income would be divided accordingly. As the NLA officials used the opportunity to draw up the border on their maps, Adi wrote down the agreement

to present it to PTPN Sawit Indonesia's officials in a final meeting. The company's representatives had no objections, and parties held a final meeting at the public administration division's office to sign the document.



Trucks loaded with oil palm fruit in Tanah Grogot.

The involvement of the public administration division ensured a timely and correct involvement of other relevant district government bodies, such as the National Land Agency. Yet, in settling the conflict, Adi had deferred to *adat* authorities because no government record of the correct border existed. In principle, Adi had no objections against working directly with the LAP because at least it enabled him to know what they were up to. The main problem *adat* organisations posed to his work, Adi had surmised, was knowing that they were there, but not knowing what they were doing.

New regional borders

Another border dispute took place simultaneously to that in Luan in the village of Bente Tualan, located in the northernmost part of Paser. The villagers of Bente Tualan were surprised by the private company PT Plenty Sawit, which was clearing a stretch of 17,500 hectares of *adat* forest land for a new oil palm plantation.<sup>19</sup> Their surprise grew even larger when the company's workers showed them a permit from the district head. Immediately a delegation was sent to the district government to find out what was going on. There nobody knew anything about a new

<sup>19</sup> PT Plenty Sawit is not this companies' actual name.

plantation, let alone about a permit. Adi and two regional police officers were sent to investigate the matter.

Upon arrival in Bente Tualan, Adi and the police officers found that representatives of the PBA were already present. Villagers were preparing to burn the heavy equipment the company had brought in, in reprisal for destroyed fields and gardens. The police officers discouraged them from immediate action, giving Adi time to speak to them. The situation was serious: not only had gardens been destroyed without compensation but young oil palms had already been planted on stretches of the cleared land.

The permit turned out to be issued by the district head of Paser Utara Penajam, the district bordering Paser to the north. Paser Utara Penajam (hereafter Penajam) became an independent district in 2002 and consists in part of former territory of Paser. With very little industry or plantations established in 2002, it was of eminent importance to the district finances to expand these sectors as soon as possible. The plantation of PT Plenty Sawit had been introduced and discussed with the population of the village of Mendik in Penajam, Bente Tualan's neighbouring village, who had accepted the new plantation and agreed not to make *adat* claims in exchange for compensation and jobs (cf. *Kaltim Post*, 22 December 2005). However, at the time of the agreement, the border between the two districts had not been established properly in the hinterland where Bente Tualan and Mendik were located.

The district heads of Paser and Penajam engaged in an emergency meeting in Balikpapan, where both pledged to support the other, should the other's definition of the border be proven correct (*Kaltim Post*, 12 January 2006). Meanwhile Adi and Paser's regional police paid frequent visits to the area, as the situation remained highly tense. The jobs in the new plantation had been promised to the inhabitants of the Penajam village of Mendik, and a group of these people had come over to Bente Tualan to demand that the work proceeded. The presence of the officials kept things in hand, but the tone was less than polite.

The Balikpapan meeting made clear that the Penajam government felt it had every right to issue the permit, whereas the Paser government believed a considerable part (ninety percent according to public administration officials) of the plantation was on its territory. Adi delivered an instruction from Paser's district head to PT Plenty Sawit's workers to immediately stop their activities until the issue had been resolved between the district governments.



In a reaction, the villagers of Mendik announced that they intended to go to Tanah Grogot to stage a demonstration there. This was unusual, and the regional police suspected that the oil palm company had incited the villagers. This was not in the least because the villagers would be allowed to use the workers' trucks to travel to

Paser. A member of Paser's parliament proposed solving the problem by issuing PT Plenty Sawit a permit from Paser as well. Once again Adi travelled to Bente Tualan, to find that both sides supported the idea. The villagers of Bente Tualan would receive compensation for the cleared forest and be in the position to find employment in the plantation as well, while those from Mendik saw the threat to their new future removed. PT Plenty Sawit was duly informed that they should apply for a permit to the government of Paser as well.

The district heads of Penajam and Paser met again, this time at the office of the provincial governor in Samarinda. They agreed to request assistance from the provincial government in establishing the border. A few days later news came that PT Plenty Sawit's workers had resumed their work, even though no permit had been issued by then and the district governments were still deliberating over the border. Adi surmised that PT Plenty Sawit must have had powerful backing if it was confident enough to act in that way. Again police and government officials were sent to Bente Tualan, this time with the intention of setting up a permanent post for the duration of the permit procedure.

PT Plenty Sawit's behaviour annoyed Paser's officials. Adi thought that the company had seriously complicated its chances of a swift and cheap settlement. He was proven correct. In July 2006 PT Plenty Sawit received a permit from Paser's government to establish a plantation of 8,850 hectares in Bente Tualan. The permit came with numerous conditions posed by the district planning agency regarding water quality, handling of chemicals, land indemnification and even landscape aesthetics (see also *Kaltim Post*, 5 July 2006). The conditions were difficult, but not unworkable and the company started to lay out the plantation. Yet this was not the end of the matter. In January 2008 an organisation from Bente Tualan, Ingai Lestari, once again called in the government as PT Plenty Sawit's land clearing permit had been expired for almost half a year (*Tribun Kaltim*, 3 January 2008; *Kaltim Post*, 4 January 2008). The company was informed that their plans for future developments had to be made clear first before a new permit could be extended. As only around half of the 8,850 hectares had been planted at the time, the company announced it would plant the remaining part as well. The issue revamped the issue of the location of the border. Once again heated discussions took place between the villagers of Mendik and Bente Tualan as each maintained that the existing plantation was mainly located on their territory. Again Adi was sent in to restore the peace, and to supervise what would hopefully be the last round of negotiations between district governments, villagers and PT Plenty Sawit.

The problem with borders lay as much in their geographic as in their legal obscurity. In both cases a clear official border had not by then been established. Adi and his team needed to revert to local *adat* authorities to first establish a consensus regarding the location of the border. Fortunately, in establishing it the conflict was largely be solved as well. The main factor of uncertainty was formed by other authorities. In Luan the officials of PTPN Sawit Indonesia, in Bente Tualan the district government of Penajam. In both cases *adat* NGOs involved themselves in the conflict as well, although they chose not to oppose or openly defy Adi.

In general, the public administration staff tended to regard *adat* organisations as complicating factors with their own agenda. If at all possible they asked them to

refrain from involvement, but they knew that the organisation's representatives would return once their team had left. Adi took exception to this view. Having met the LAP leader, Ishak Usman, and the secretary, Zulkifli, on various occasions, Adi had grown impressed with their effort and decided to join the organisation as a supporter of Zulkifli.

On various occasions Adi brought in Zulkifli in his function as LAP secretary in order to expedite conflict settlement. As Zulkifli's presence proved to give increased authority to Adi's role, the two decided to cast Ishak Usman as a solver of disputes and brought him in at various occasions to confirm the agreement that had been reached. These sessions gave Usman the chance to counter allegations that the LAP was a government window-dressing, and allowed him to identify with the Paserese from a mutual underdog position.

Adi and his team could refuse other *adat* organisations access to the meetings and proved invaluable to the LAP's board in gaining them a reputation of concerned activists. Like the PBA before them, the LAP was focussing on profiling their leader as a wizened *adat* authority willing to assist in land conflicts. The important difference with the PBA was that the LAP did not request payment for its services. However, at the highest level of district government the influence of the LAP in public administration mediation was not greatly appreciated. The organisation threatened to make off with the success of the new, government-sponsored mediation program set up by Suwidi. The PBA, who by now had established relations with the district government, objected to the state of affairs as well, as they two were threatened by the rise of the LAP's public popularity. The solution proved simple. In 2006 Adi was transferred from the public administration division to the regional police, which restricted his independence in operations but conserved his social skills for the government. The LAP consequently lost its access to the government-supported negotiations, and, like the PBA, saw its active role in society considerably diminished.

## 8.6 Concluding remarks

In the previous chapter I discussed how social organisations championing *adat* rights enlisted grassroots support and swiftly gained influence in local society. Some of them developed into powerful players in the political arena and introduced themselves thoroughly into the circles of those in control. The subject of this chapter, the political dimensions of settling land conflict, approaches this emancipation –and mobilisation– of *adat* from a different angle, that of the powers of government. Whereas in the previous chapter emphasis lay on *adat*-organisations' attempts to incorporate, or at least associate with, government authority, the focus here is on governmental 'counter measures' and attempts to domesticate the wild authority of *adat*. As such, this chapter illustrates how conflicts over land rights form a ground where the representatives of these two authorities engage with one another. These engagements are not the clean-cut, professional and arranged affairs that a trying of the case by the district court could be. They are complex

and layered social processes that have a distinctly political undertone. Although the processes are concerned with administering justice, parties, and especially mediators, are aware that their performance almost certainly has consequences for the way in which local society perceives them. Mediators thus not only need to settle the case to the best of their ability, they also need to socially outshine their competitors.

### Linking authorities

Attempting to ensure the support of influential and/or powerful groups in order to obtain an electoral victory is one of the reasons why candidates for political posts filled through public elections wage campaigns. These do, however, work the other way around as well. Organisations may put their weight behind a candidate, but this involves a process of selection and negotiation. Betting on the wrong horse means that the organisation has to start anew in establishing its links to the local heads of government, and this time with little to offer that the newly elected head might need. Paser's district head elections are a clear example of this process. Whereas the incumbent district head Syarkawi had lost much public support, the leader of his main *adat* ally, the LAP, decided to challenge him rather than continue their support and risk a decrease of their own popularity through this association. Suwidi, the eventual winner, was a candidate who both the LAP and the PBA initially underestimated. When the PBA finally came out in Suwidi's support, they did so too late to claim a decisive role for themselves.

As such, the 2005 district head elections brought a reshuffle of the relational balance between *adat* organisations and district head. Under Syarkawi, both the LAP and PBA were able to further their own public reputation because of unpopular government policies, but Suwidi bypassed both organisations and won his victory without major assistance by either *adat* organisation. Both the LAP and the PBA thus entered the new district head's term in a lesser position than they had aspired to.

What is more, Suwidi effectively brought new competitors to the settlement of *adat*-based land claims when he instructed his public administration staff to engage in these problems. As the field previously was devoid of government influence, Suwidi engaged in undercutting the LAP's and PBA's major source of public support. Whereas the *adat* organisations had come to the fore as alternatives to Syarkawi's unpopular government, Suwidi was attempting to restore the government's position of authority by securing broad public support. In *reformasi* era Paser authority is nobody's prerogative. It needs to be obtained through the population. Land, as this chapter illustrates, is an excellent, highly visual arena to attempt it.

### Dealing with the law

Land access in Paser is governed by structures of authority that are quite different from what national law prescribes. The activities of *adat* organisations and authorities had already been highlighted in chapters 5 and 7, yet as the cases discussed in this chapter show, the district government reverts to alternatives to official law

as well. From a practical perspective, this makes sense. To win over a population that has turned to non-state authorities as official authorities failed to adequately address their legal needs, government representatives must apply a discourse that addresses the population's needs in terms of the advantages of official regulation. The strict applications of official law practiced by the NLA and the district court, combined with these officials' reputations for corrupt practices –whether by unjust association or not– had large groups of the population refrain from using their services. Yet neither NLA personnel nor judges could deviate from the common practices of their respective institutions. Making allowances for *adat* land claims is not part of these, nor do these centralised systems encourage local initiative or alternative interpretations. Appeals for recognition or protection of *adat* land rights addressed to these officials would hence not stand much of a chance.

*Reformasi* created new opportunities in this field. Regional heads of government could apply their new authorities to engage in virtually all affairs taking place within their territories and, through the new system of direct elections, had an incentive to do so. Suwidi's public administration negotiators had to ensure that their negotiations did not result in violations of the law. When both parties agreed to an outcome in which one party indemnified another for infringements of its *adat* rights a payment was made that was often, strictly speaking, not required under official law. Agreement does however have distinct advantages. The negotiation procedures are presided over and witnessed by representatives of the regional government, thus giving the proceedings a distinctive official approval, while non-*adat* parties have greater confidence in the neutrality of these government mediators than in the neutrality of *adat* organisations. As illustrated by the case of Ibing in the above, the public administration mediators are unwilling to accept *adat* claims they find dubious.

To the Paserese population at large, the official approval obtained by negotiating through the government mediators is a solid advantage over the *adat* organisations. A plantation company agreeing to pay an indemnification in front of government officials will find it much harder to retract its promise at a later stage. For both the population and companies the district government's involvement acts as a guarantor that the other party will honour the agreement. Although no official law is applied, the authority of the government is associated with the outcome.

### Adat authority

Suwidi's public administration negotiators and their government authority pose serious competition to both the PBA and the LAP. Both organisations saw their main public functions as defenders of Paserese *adat* rights diminish due to the extra security of government approval that the public administration mediators provided. The continued social relevance of both *adat* organisations largely depended on their abilities to adapt to these new circumstances. The LAP's sophisticated strategy of enlisting the public administration's main negotiator was not unlike a copy of Suwidi's original technique of absorbing the clout of the *adat* organisations by launching a similar organisation. However, the transfer of this person left them temporarily sidetracked. The PBA's move to a more militant advocacy, in which



they support *adat* parties with strategic advice while leaving the actual negotiations to the public administration officials, has left that organisation in its largely independent, non-government role.

Suwidi's willingness to engage with *adat* land claims and attribute value to their validity has won him the support of a large part of the population in a manner that the *adat* organisation cannot. Their authority does not approach that of the state, and the security their decisions offer is far less certain than those made in the name of the regional government. Yet the fact that Ridwan Suwidi has decided to deal with *adat* land claims in another way than his predecessor can be considered as a sign that the *adat* organisations are able to influence affairs in Paser. The question whether a district head would be willing to engage with the affairs and problems of the population at large in the manner that Suwidi did in Paser if that population had not contained influential militant and activist elements thus is a fair question to ask. Although I believe that a positive correlation can be said to exist between the two, it seems likely that this correlation can be influenced by the size and frequency of the claims. If they would become a threat to the district's economy, the government's tolerance of *adat* land claims might well become less liberal.

# The Sultan's Map 9

## Arguing aristocratic land rights

One of the propositions made in the preceding chapters is that *reformasi* provided a forum for claims based on all sorts of grounds. As yet I have mainly discussed claims relating to *adat* or official law and the political field they generate in society. The type of claims that is most common in both Nunukan and Paser. This chapter deals with a rather different type of claim; that of a descendant of Paser's former sultans who maintains to possesses rights to tracts of land because of privileges inherited from his ancestors. The case is not unique, as similar claims are being made in former sultanates and kingdoms in areas throughout the Indonesian archipelago. Such claims relate to local regional identity as well as to history and may emphasize the uniqueness of a region, yet they may also go against the interest of the population using the claimed land and any such rights as they consider to possess.

The case discussed here relates to Paserese tradition, custom and identity. The claimant presents a version of *adat* different from that professed by the *adat* organisations and not supported by any substantial part of the population. The case is mainly being argues through the district court, a forum that was conspicuously absent in the settlement of conflicts in the preceding chapters. The court's involvement show all parties involved –the claimant, the *adat* organisations and, eventually, the district government- adapt their strategy to incorporate the authority of the court. The legitimacy of the claim is the main issue at stake, and to decide upon it parties do not hesitate to refer back to the legitimacy of the former sultanate at large. Matters and arguments which should not have a place in the case's handling from an official legal perspective are brought to bear and although the court's decision is couched in legal terms, the process leading to its of its determination largely takes part outside of the court of law.

### 9.1 Return of a sultan?

Tanah Grogot, Paser's capital, is a small but dynamic city. As the government seat and the location of the district's largest market, many visitors frequent the town. A few simple yet comfortable hotels offer accommodation. One or two up-market places cater for government officials, the most prestigious one lavishly decorated with spiralling Dayak patterns on the exterior and Dayak shields and blowpipes on its interior walls.

One category of travellers that rarely comes to Tanah Grogot are tourists. Paser does not feature in the *Lonely Planet* or *Rough Guide* books that are favoured by non-Indonesians, while the city's distance from the inter-provincial road between Balikpapan and Banjarmasin makes it an unlikely remote destination for Indonesian tourists. However, each year around the days of *Idul Fitri* visitors travel to Tanah Grogot from Banjarmasin, Balikpapan, Samarinda, and from as far afield as south-



ern Sulawesi to visit the palace, mosque and graveyard of the former sultans of Paser.<sup>1</sup> Located in the village of Paser Balengkong on the outskirts of Tanah Grogot, the graves are said to be powerful holy places. A fair number of visitors appear to undertake a pilgrimage rather than a trip to divert the senses, offering prayers and making requests at the graves of particularly renowned sultans. Occasionally visitors stay to meditate among the old graves that are decorated with yellow and red cloth- the colours of Paser's royalty. The graveyard's caretaker makes sure that the weathered wooden grave markers are kept clean and in as good a condition as the elements allow for. He claims to know some of the sultans personally, having met their benevolent spirits during his lonely nightly rounds in the graveyard. He treats them with the utmost respect. That is why, he feels, his family and himself have enjoyed very good health over the years.

The nearby palace is located on the bank of the Kandilo River, which flows past Tanah Grogot further on. It is built in Buginese style: an elongated dwelling raised on stilts with a mildly inclining roof, distinguishing itself from ordinary houses through its sheer size and the sultan's coat of arms painted over its veranda. Constructed between 1844 and 1873 as the residence of Sultan Aji Tenggara, the building served as Paser's royal residence until the last sultan abdicated in favour of the Dutch government in 1907. Kept in good repair, the palace is today a museum that houses a surprisingly diverse collection of objects from the royal past. The centrepieces are life-sized paintings of Sultan Ibrahim Khaliluddin and his wife.<sup>2</sup> There is a sign underneath Sultan Khaliluddin's portrait that reads:

"Sultan Ibrahim Chaliludin.  
enthroned/governing 1895-1916  
Exiled by the Dutch Indies government in 1916, first to Banjarmasin (Teluk Mesjid),  
after which he was moved to Teluk Betung and finally to Cianjur in West Java.  
He died in 1939."

Tanah Grogot's public domain contains virtually no clues of Paser's royal history. A large monument in the centre of town commemorates the 'Fight of the Paserese People' (*Perjuangan Rakyat Paser*) in 1916 and there is a street named after Pangeran Menteri, a prince who rebelled against the colonial occupation, in a remote part of town. Yet the monument does not contain any information regarding what happened in 1916 and it is commonly thought of as a monument commemorating the 1945-1950 fight for Indonesian independence. Yet the event was important enough. In 1916 Paser saw a failed local uprising against colonial authority. The uprising's leaders, among them the former sultan Khaliluddin and his cousin Pangeran Menteri, were banished as a result.

<sup>1</sup> *Idul Fitri* is a festive holiday marking the end of the Muslim fasting month of Ramadan. It is not uncommon for Indonesian muslims to visit the graves of loved ones or holy places in this period.

<sup>2</sup> The name of this sultan occurs in various spellings. I have chosen to use 'Khaliluddin' as this is the version used by the Paserese government and the Indonesian East Kalimantan historians Assegaff (1982) and Noor and Prnomo (1997).



The former sultan's palace in Paser Balengkong.

Tanah Grogot's street names are dominated by the national heroes and monuments one encounters in every Indonesian city. The main road is named after the national hero General Sudirman, with others such as Iman Bonjol, Diponegoro and Kartini having their names used for the side streets. Following the provincial example the government offices that line Sudirman Street are decorated with Dayak motives and stylised Dayak shields, even though Paser, and especially the coastal plain where Tanah Grogot is located, is Malay rather than Dayak.

Paser's sultanic past thus has little impact on the district's present day identity. The historic remains in Paser Balengkong are quaint remnants with a marginal mystical and religious function that do little to glorify Paser's identity. The public image of the district is that of a part committed to the greater entities of the province of East Kalimantan and the Indonesian state, rather than one of those regions that opted to use decentralisation to follow their own course. Yet this observation misses the grassroots level, where the sultanate is undergoing a revival of sorts.

This chapter is a case study of a land claim based on an alternative version of Paserese tradition and history to the *adat* claims that have been discussed earlier. A descendant of Paser's last sultan, whom I shall call Pak Keturunan, or Pak Tur, owns an old map.<sup>3</sup> Drawn in black ink on pink silk, eaten by moths in places and weighed down with official seals, it confirms a stretch of land as the sultan's private property. The land, some 1160 km<sup>2</sup> of prime coastal land, covers around ten percent of the district's total territory and some 22 percent of its fertile coastal zone. It contains agricultural plots, villages and houses, large-scale plantations and

<sup>3</sup> Pak Keturunan is not this person's real name. As this discussion does not require use of his actual identity, the interests of privacy prevail.

mining operations. It is, in short, of considerable social and economical importance to the population and the economy of the district.

Basing himself on national inheritance law and sustaining his claim with references to *adat* and historical rights, Tur claims the land as his private property. His claim is disputed by another sultan's descendant, Pak Tio, who maintains that Tur's version is nonsense, and by the PBA, who maintain that the sultan never had any authority over land and that the only people having *adat* rights to the land are the Orang Paser. The district authorities who have to deal with these claims lack knowledge of Paserese customary law and only realised that there was a threat of losing state land to a private party when the claim was about to become a public conflict.

Tur's claim is being considered by relevant courts of law, but these courts' decisions are not undisputed. Parties refer to conflicting versions of local history, of *adat* and of social norms in general to refute the courts' - and each other's - versions of how the claim ought to be solved. These arguments are distinctly local in range. Used alongside official Indonesian law they thus contribute to a legal process that is distinctly Paserese in character and evolution, and contains developments that would not be legal in the eyes of a non-local judge.

## 9.2 The sultanate of Paser in historical perspective

Paser's royal past can be traced back at least several centuries. The *Nationaal Archief* (the Dutch national archives) contains a letter sent by Sultan Nata Nagara and Pangeran Mangku Nagara dated 1777, in which the sultan writes that with that letter he has sent his son Pangeran Aria Siri Nagara and his son-in-law Gusti Kasuma Ningrat to the headquarters of the East Indies Company (VOC), to request the Company to take Paser under its protection against people ruining the sultanate. Who these people are is not made clear, but the historian Assegaff (1982:128-134) describes a power struggle taking place from 1778 onwards between two pretenders to the throne of nearby Banjarmasin. One of the contestants was Banjarese, the other was a Bugis ruler who operated from Paser. The VOC appears to have ignored the letter from Paser, but when the Bugis party managed to conquer the Banjarese capital of Martapura, the Banjarese pretender petitioned the VOC for help in exchange for payment or land. As Banjarmasin was the VOC's premier source of pepper in Borneo this request was honoured. Eisenberger (1936:16) writes how in 1787 Batavia sent a contingent of 80 soldiers, but not after the Banjarese pretender agreed to hand over the sultanates of Tanah Bumbu, Pegatan, Paser, Kutai, Berau, Bulungan and Kotawaringin to the VOC. The combined Banjarese-VOC forces then beat and captured the Bugis pretendent, and in the process sank the entire Paserese war fleet of 30 ships (Assegaff, 1982:134).

In 1797 the VOC returned all the territories it had received to the Sultan of Banjarmasin. The official reason given was that the Company wanted to improve its relationships with Banjarmasin and guarantee more frequent delivery of pepper (Eisenberger, 1936:17), but the fact that the sultanates did not recognise Banjarese overlordship or, as a consequence, rights of the VOC, might have contributed. In 1789 for instance, Gusti Kesuma Ningrat, the son-in-law of Paser's sultan, sent

a letter to the VOC stating that the Sultan of Banjarmasin had no power in Paser and that the VOC had been swindled. Similar letters arrived from Kutai and Berau (Assegaff, 1982:134-136). At the time the VOC was at the brink of bankruptcy, and lacked the funds to enforce its claim. Thus Gusti Kesuma Ningrat's refutation of VOC authority was not contested and Sultan Nata Negara remained Paser's ruler.

In 1799 Gusti Kesuma Nikrat succeeded his father-in-law as sultan of Paser under the name of Sultan Ibrahim Sulaiman. An enterprising man, Sultan Sulaiman rebuild the war fleet for an expedition against the Illanun and Sulu pirates of the islands of Mindanao and Sulu in today's Philippines, who raided Borneo's coasts as far south as Paser.<sup>4</sup> He set about gathering allies for the fight and approached the VOC for support, as becomes clear from a letter of Sultan Sulaiman that is kept in the *Nationaal Archief* as well. However, as the VOC was discontinued in that same year it seems unlikely that Sultan Sulaiman received any assistance from that side. Neighbouring sultanates were not too keen either, and Sultan Sulaiman contented himself with setting up an extensive coastal defence in Paser (Assegaff, 1982:137-138).

What the two letters in the *Nationaal Archief* and Assegaff's work make clear is that prior to the establishment of a strong colonial authority in the area, numerous sultanates were engaged in local power struggles. Alliances and treaties were formed and disbanded and whereas Banjarmasin claimed overlordship over most of Southeast Borneo's sultanates it had increasing difficulties in upholding the claim in practice. The VOC's only permanent presence in the area consisted of a trade centre in Banjarmasin with a token force garrison. Its local representatives lacked the means to enforce the contracts for the deliveries of pepper that had been negotiated with the sultan, or other rulers. The ensuing lack of profit made the Borneo enterprises costly affairs and dampened the Company's enthusiasm for the area. The VOC failed to capitalize on its value as a military ally and secure political and economic profit.

Following Napoleon Bonaparte's conquest of the Netherlands and the consecutive proclamation of the Batavian Republic, the Dutch territories were annexed into the French Empire. All Dutch colonies shared this fate, making Napoleon's British adversaries decide to conquer the Dutch East Indies. These remained under British rule until after Napoleon's final defeat at the battle of Waterloo, when the British and Dutch governments agreed upon a trade of various colonial areas to homogenize their respective territories.

## Incorporation into the Dutch East Indies

When the Dutch returned to Banjarmasin in 1816, the earlier demise of the VOC left the Indies under the rule of the national Dutch government. In 1817 its representatives signed a new contract with the sultan of Banjarmasin, which gave the colonial authorities control over - among others - Paser, Kutai, and various other east coast sultanates. Again, this authority was mainly a theoretical construct. Freshly established in Banjarmasin, the colonial government set about founding its author-

4 See Rutter (1991) for an extensive discussion of piracy in Borneo's seas in colonial times.



ity with the limited financial and military means at its disposal and was soon fully embroiled in the intrigues, wars and uprisings that characterized relations among the south-eastern sultanates. In reports of the time Paser and Kutai feature as territories that beaten or rebellious leaders fled to in order to remain out of the hands of the government.

The sultanates were visited only occasionally by representatives of the government. In 1825 Major Georg Müller undertook a trek through Borneo from Kutai after signing a treaty with the sultan on behalf of the government. Müller was killed in a remote part of the interior, presumably on the sultan's orders (Bakels and De Jonge, 2001:15). The incident added to the east coast sultanates' reputation of untrustworthiness. Nonetheless, a new contract with the sultan of Banjarmasin signed in 1826, gave the government full property rights over the areas that had come under its authority in 1817, including the east coast sultanates (Eisenberger, 1936:21).

During the first half of the nineteenth century Borneo's west coast attracted most of the attention of the colonial government. In 1841 the Englishman James Brooke established himself in Sarawak, to which he received permanent rights from the Sultan of Brunei some years later. Having colonial competitors in such close proximity did not please the Dutch government and this encouraged the colonial administration to strengthen its grip on the area. This led to a number of prolonged and expensive wars. First was the Kongsu War (1850-1854) against the semi-autonomous Chinese mining associations operating in West Borneo's hinterland. This was followed by the Banjarmasin war of 1859-1862 which started as an issue of succession but resulted in Banjarmasin becoming a region under direct rule of the colonial government. At the time Paser was occasionally visited by Dutch merchant ships and gained a reputation as a good trading market, but it was only in 1844 that a political contract between the colonial government and the sultanate was entered into. The Malay version of this three-point contract (published in Assegaff, 1982:171) made the desired relations perfectly clear:

1. The Sultanate of Paser is a valued friend of the Kingdom of the Netherlands and the Kingdom of the Netherlands is a valued friend of the Sultanate of Paser.
2. Enemies of the Kingdom of the Netherlands are the enemies of the Sultanate of Paser and the enemies of the Sultanate of Paser are the enemies of the Kingdom of the Netherlands.
3. The Sultan of Paser is a loyal friend of His Highness the King of the Netherlands and therefore also of the Governor General [of the East Indies] as the representative of the King of the Netherlands.

Again, the contract turned out to be little more than a formality. As the Banjarmasin war evolved the contract expired and was not renewed, not in the least because the east coast sultanates (except for Kutai) were perceived as supporting the forces opposing the government. In 1862, as the Banjarmasin War neared its conclusion, Paser's sultan conceded to enter into a political contract with the colonial authorities, much to the chagrin of his nephew who played a major part fighting against the colonial forces (see Noor and Purnomo, 1997:38-40). Nonetheless

the east coast sultanates to the south of Kutai remained turbulent places, and the intended contract was slow in the making.<sup>5</sup> In various sultanates tensions over the succession of deceased sultans had disgruntled candidates joining bands of Banjarese who had not surrendered and had set up camp in the interior of the southeast.

In 1874 a number of nobles rebelled against the sultan of Paser and attempted to replace him with a Paserese supporter of the Banjarese guerrillas, but they were repulsed. To prevent further surprises, the sultan requested to have a European government official stationed permanently in Paser. This request was not granted immediately. In 1884 Paser was made an individual regency and a government overseer (*controleur*) was appointed for its administration. Yet the overseer was not required to take up residence in the sultanate, as the area was still considered to be very dangerous to Europeans.

Following the death of the sultan in 1886 and the inauguration of his successor, rifts between various factions of the royal family led to administrative chaos in the district. The colonial government found the new sultan, Muhammad Ali, an incompetent ruler and in 1896 sent a military force to escort him into exile in Banjarmasin, on the grounds that he worked against the interests of the government. He was replaced by a governmental candidate, his son Abdulrachman, who died two years later. With government support, Sultan Khaliluddin was then placed on the throne, inaugurated in 1900.



Portrait of Sultan Khaliluddin in the former palace.

That same year a colonial presence was permanently stationed in Paser (Nusselein, 1905:571). This overseer's group built a residence, police barracks, office and warehouses at a location which the sultan had allocated for this purpose. The area was called Tanah Grogot (nibbled land), after the sound that the water of the nearby Kandilo river made in the vegetation of the swampy banks. The sultan's residence at Paser Balengkong was a few kilometres further upriver.

Khaliluddin's rule did not alter the situation in Paser much. Khaliluddin cooperated with the colonial government and was willing to enter into consecutive treaties in which he handed over ever more authority. Whereas the first treaty of 1903 consisted of 43 Articles on the relationship between the sultan and the

<sup>5</sup> See Tichelman (1938 or 1949) for eyewitness accounts of the period by the *resident* J. J. Meijer.

colonial authorities, the succeeding and final contract of 1906 was considerably briefer.<sup>6</sup> Its introduction and three Articles read:

**Agreement between the Dutch East Indies government and the Sultan and nobles of Paser concerning the placement of the district of Paser under direct governance.**

As it became advisable to bring the district of Paser under direct governance of the Dutch East Indies government, while His Highness the Sultan of Paser expressed his desire to offer control of the district and all rights arising from it to the Dutch East Indies government according to conditions that are still to be determined, thus today the sixth of the month Djoemadilahir of the year 1324 of the Mohammedan calendar, being equal to the 28th of July 1906 awaiting further approval and confirmation of the Dutch East Indies government the undersigned Henri Nicolas Alfred Swart... civil and military *resident* of the Southern and Eastern Department of Borneo authorized by and in so far as acting in the name of the Dutch East Indies government, and His Highness Ibrahim Chatil Oedin, sultan of Paser and his nobles, have agreed as follows:

**Article one**

The native government of Paser declares to fully cede all its rights and claims to the district of Paser in favour of the Dutch East Indies government. Because of this the Sultan relieves all subjects of oaths of loyalty and obedience to him that were taken in the past.

**Article two**

The area will henceforth be recognised as resorting under the direct authority of the Dutch East Indies government.

**Article three**

In compensation to the loss of revenues caused by the aforesaid cession the government will pay a reimbursement of 327,267 [Dutch guilders] to the native government.

Upon acceptance in 1908 by the Dutch East Indies government of this contract, the Sultanate of Paser effectively ceased to exist as an independent entity and was replaced by the Dutch East Indies district of Paser. On a more personal level the sultanate did continue to play a role in Paserese society for several years to come, and that role had considerable influence on the land claim made by Tur.

9.3 Historical background to Tur’s claim

A number of historical figures, treaties and events are presented by Tur as the legitimizing basis for his claim. Others, however, disagree with Tur’s views of Paserese history and dispute his claim by arguing an alternative version in which the sultan is not the hero of Tur’s account, but a foreign colonizing power.

In 1896 the colonial government deposed Sultan Muhammad Ali of Paser, as his government was considered too weak and rival factions threatened to undermine Dutch authority (Nusselein, 1905:569). Sultan Muhammad Ali was banished to Banjarmasin where he requested, and received, for himself and his descendants the right to the proceeds of three of Paser’s areas as an income. According to Sultan Muhammad Ali Samuntai, Adang and Muru were *tanah adat pusaka*, or *adat* land with heirloom status in his branch of the royal family (Assegaff, 1982:186-188). The three areas are fertile stretches of coastal land, located to the north of Tanah Grogot. The written notification endowing Sultan Muhammad Ali with this right survived, and is among Tur’s documentation. Tur descends from Sultan Muhammad Ali through his mother.

Sultan Muhammad Ali was succeeded as sultan by his son Abdurachman, who died soon after in 1898. Abdurachman’s son, Pangeran Panji, could not succeed his father, as Panji’s mother was not of royal descent. Sultan Abdurachman was succeeded by a string of candidates whose reigns were cut short by internal squabbles or involvement of the colonial government. The strife over the position ended in 1900, when colonial support ensured that Sultan Khaliluddin was elected to the throne.<sup>7</sup> To placate his opponents and maintain unity, Sultan Khaliluddin agreed that one of them, Aji Nyesei, would be his successor. A number of other nobles managed to ensure influential positions as well, notably the sultan’s advisors (*menteri kesultanan*) Pangeran Panji (Sultan Abdurrahman’s son) and Pangeran Menteri (Khaliluddin’s brother).

Sultan Khaliluddin preferred local popularity to strong government and he regularly omitted to collect taxes, to the annoyance of the colonial government. Although the political contract of 1903 strengthened the government’s grip on Paser, any signs of colonial control led to rioting by Pangeran Panji’s supporters, who increasingly refused to recognise the Sultan’s authority (Eisenberger, 1936:84, 86).

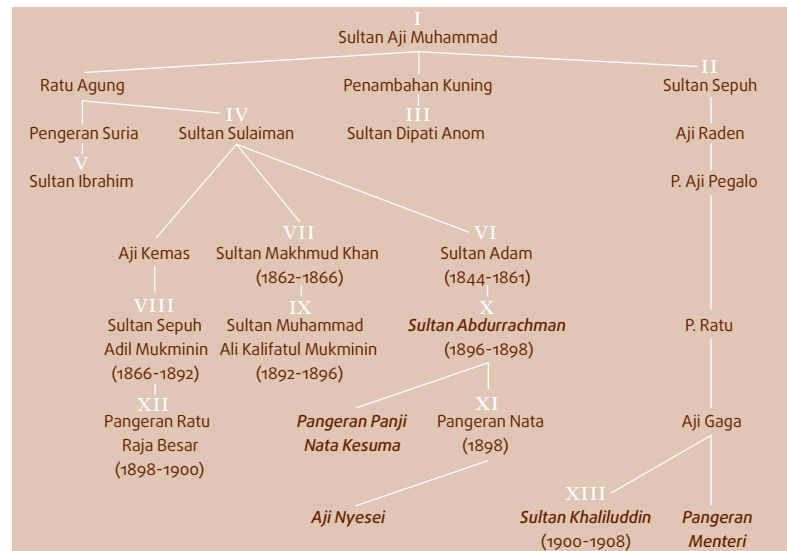
In 1906, Sultan Khaliluddin proposed that the colonial government would bring Paser under direct colonial rule as he feared his power and support were waning. The proposal was strongly protested by Pangeran Panji’s supporters, but resulted in the 1908 contract discussed above (Eisenberger, 1936:88-89). The twelve main nobles of the sultanate, among them the sultan, Aji Nyesei, Pangeran Panji and Pangeran Menteri, received indemnifications (Assegaf, 1982:209-210).

Not all agreed to the ending of the sultanate’s independence. Pangeran Panji had not been willing to cede his title, rights and powers to the Dutch in the first place, but had been pressed into doing so by sultan Khaliluddin and the other prominent nobles (Noor and Purnomo, 1997:44). After a number of years of discontent with his position under the colonial government, Pangeran Panji attempted to regain the position of Sultan of Paser by force of arms in 1912. By spreading the rumour that a large Turkish force was on its way to kill all unbelievers, he managed to nominally convert 3,000 Dayak of the interior’s mountain tribes to Islam. Leading this force and loyal lowland supporters to the coast, he intended to drive out the colonial presence and become the new sultan of Paser. The Dayak however proved

<sup>6</sup> See *Bijlagen tot de Handelingen der Tweede Kamer* 1903-04-201, Nos 31 en 33, pages 27-32 for the 1903 treaty, and *Bijlagen tot de Handelingen der Tweede Kamer* 1908-09-311 no 44, page 26 for the 1906 text.

<sup>7</sup> For a discussion of the position of the sultan and royal family politics see Hairiyadi (2005:162-180).

to be poorly motivated, and Pangeran Panji's forces melted away as he left the mountains. Hastily drummed up police reinforcements eventually arrested him and he was banished to Banjarmasin that same year (Eisenberger, 1936:93).<sup>8</sup>



Simplified genealogy of Paser's royal family showing the successions to the throne (after Noor and Purnomo, 1997:68). Highlights and romanics indicate the sultanic lineage. The names of individuals specifically related to in this chapter are marked in bold and italics.

The following years saw sporadic occurrences of armed resistance, which grew steadily more focussed. In 1913 a follower of Pangeran Panji again nominally converted Dayak to Islam through the threat of a foreign invading army- this time the Japanese would come to reinstall Pangeran Panji as sultan- but again the attempt failed (Eisenberger, 1936:94).

A better coordinated uprising took place in 1915. The followers of Pangeran Panji allied themselves to anti-government elements within Paser's chapter of the Sarekat Islam movement to start an uprising to re-establish Paser's independence as a sultanate.<sup>9</sup> Pangeran Menteri and the last sultan, Khaliluddin, were said to lead the uprising in secret, thus giving rise to the part of Paser's history that shows in Tanah Grogot's street scenery.

The uprising was taken up throughout Paser, and required the assistance of three brigades of infantry reinforcements and took two years before it was overcome. Rigorous patrolling and occasional fights resulted in the deaths or arrests of the main leaders. In 1917 sultan Khaliluddin and Pangeran Menteri were arrested and

exiled in 1918. Khaliluddin was banished to Java and Pangeran Menteri to Padang in Sumatra (Eisenberger, 1936:96-8; Assegaf, 1982:219-227).

The remainder of Paser's nobles and lesser members of its royal family continued to live in the former sultanate, but none of their privileges or formal titles remained. Nonetheless several of these managed to successfully build up a new existence. Aji Nyesei for instance, Khaliluddin's appointed successor, married into a family of Bugis traders and became a successful businessman with property in Kalimantan, Sulawesi and Singapore. Khaliluddin remained in Java and eventually died in Cianjur, where his tomb is located and from where his direct descendants maintain a website on the history of the sultanate.<sup>10</sup> Pangeran Menteri died in Padang, but one of his sons returned to Paser. There he married a granddaughter of Pangeran Panji and they had a son; Keturunan.

## 9.4 Sultans during colonial rule and independence

What today is the Republic of Indonesia before consisted of a large and diverse number of sultanates, kingdoms, village states and fiefdoms. Two of the most frequent titles for those in power were *raja* and sultan. *Raja*, a Sanskrit term, predates sultan, a title associated with Islam and Malay culture. Although there are Muslim *raja* in Indonesia, many Muslim rulers are sultans. As Milner (1982:2) shows, the power and territory held by a ruler were subject to change. Migration from unpopular or harsh rule was common, and as little political or administrative organization existed power was linked directly to the ruler and his personality. The Malay words for a *raja's* or sultan's domain (*kerajaan* and *kesultanan* respectively) mean little more than 'being in the condition of having a *raja* or sultan'. A condition which makes that the term connotes an absolute autocracy in which the ruler's word was law.<sup>11</sup> Yet the ruler was rarely directly involved with governance. His task lay in the correct application of tradition in the domain (Milner, 1982:94-111).

An elite of nobles and members of the royal family sat between the population and the ruler and were involved in governing the territory. Through their actions the elite greatly influenced the ruler's popularity. A ruler thus had to control his nobles. If he failed, his domain and power would inevitably suffer. In many instances, colonization by the Dutch did not alter these arrangements. Local rulers would be allowed to remain in power after committing themselves to the colonial government. Provided they honoured the agreements in which they had entered with the colonial government, their territories would become self-governing regions (*zelfbesturende landschappen*) within the Dutch East Indies.

Variety among such arrangements formed a diversifying factor to colonial rule (Bongenaar, 2005:69-84) that was complicated even more by the usage of a plural legal system. In areas under direct colonial rule, the heterogeneous indigenous population was mainly governed by local customary law, *adat*, which was administered by its own authorities. Dutch citizens and other Europeans were subject

<sup>8</sup> Assegaf (1982:215-218) gives other years and details of Pangeran Panji's involvement in a prolonged guerilla war over the following years.

<sup>9</sup> Sarekat Islam was a national movement critical of colonialism and in favour of self-government.

<sup>10</sup> See [http://kesultanan\\_Paser.tripod.com/](http://kesultanan_Paser.tripod.com/)

<sup>11</sup> See Mabbett (1985:14-23) for a more extensive discussion of Indonesian feudalism.

to European Law, while ‘foreign orientals’ were subject to a third category of law. The numerous sultanates and kingdoms not under direct colonial governance were subject to indigenous law administration (*inheemsche rechtspraak*), which did however not apply to Europeans and foreign Orientals.

The role of sultans and other indigenous rulers gradually diminished from the end of the nineteenth century onwards as the colonial government strengthened its grip on the self-governing districts. Elaborate individual contracts and agreements (*lange verklaring*) were replaced by more or less standardized ‘short declarations’ (*korte verklaring*) that mainly summed up duties and largely did away with privileges (Bongenaar, 2005:308-311). Thus the position of sultan, while maintaining its ceremonial and customary meaning, was largely stripped of authority other than what was explicitly agreed to by the colonial government. In the eyes of the majority of Indonesia’s population however, indigenous rulers remained closely associated with the colonial authorities. Decades of (close) collaboration with the Dutch had made many local rulers into highly unpopular figures.

### Sultans after independence

When the 1945 national revolution ended the colonial period, indigenous ‘feudalism’ finished along with it (cf. Lucas, 1991; Van Langenberg, 1982). The legal system of the republic held no place for privileged sultans or kings. Article 131 of the Provisional Constitution of 1950 stipulated that autonomous governance of areas of Indonesia had to be confirmed in a national law. As no such laws existed at the time, autonomous rule by a sultan was essentially illegal. The single exception was the Sultanate of Yogyakarta. The support of Yogyakarta’s sultan for the Indonesian independence movement provided the basis for Law 3 of 1950 which recognized Yogyakarta as a ‘special region province’ (*propinsi daerah istimewa*) and gave the sultan authority in the province’s regional affairs.<sup>12</sup> When Indonesia’s original 1945 constitution replaced the 1950 provisional constitution, Article 18 of the 1945 constitution confirmed Article 131 of the provisional constitution. A few years later Law 1 of 1957 was passed which further limited the potential authority of sultans. Article one of this law required special regions such as Yogyakarta to have a government of seven people, thus making an individual sultan a minority whose ideas and policies could be controlled and countered by the other six members.

The aristocracy was stripped of its lands as well. The 1960 Basic Agrarian Law decreed that the general interest should be protected by limiting large landownership (Article 7) and that all land has a social function (Article 6) which supersedes individual interests. It instructed the enactment of a maximum size of land property (Article 17), and the formal registration of all land tenure (Article 19). Maximum sizes of land holds were established in two laws. Law 56 of 1960 allows for ownership of plots of between 5 to 20 hectares (Article 1), depending on local population pressure, while the Minister of the Interior’s Regulation 6 of 1972 (Article 2) limited ownership of farm land and building land to 2 hectares and 0,2 hectares respec-

tively. Although preservation of large estates occurred in areas where the owners could muster political support (Tjondronegoro, 1991:21-23) and in fact still exists (see for instance *Suara Merdeka*, 17 April 2007), many sultans’ pasts of associating with the colonial government denied them support in the government of newly independent Indonesia and thus the possibility of maintaining estates exceeding the legal limits.

Sultans lost their formal positions, their sources of revenue and other privileges. Many of Indonesia’s major palaces became museums. In some cases royal families continued to live in parts of the buildings, such as the Sultan of Deli in the Italian-designed Maimoon palace in Medan. For many years Dutch tour operators included a banquet in the palace of one of Yogyakarta’s princes in their itineraries, but in many other cases the families of former rulers had to find a job outside their former environment. As many royal families had had their children attending some form of higher education, many members of royal families nowadays work as civil servants in the local bureaucracies. After hundreds of years, the era of sultanates thus appeared to have ended with Indonesia’s independence.

### 9.5 Sultans in the 21<sup>st</sup> century?

The last sultan of Paser, Ibrahim Khaliluddin, abdicated in 1908 after reaching an agreement with the Netherlands East Indies government. Paser was among the last of the sultanates in southeast Kalimantan to hand over its power to the colonial government. Nonetheless it would not be until 1960 that the sultan of Kutai, the largest and richest sultanate of the area, lost his power to the Indonesian state.

In many cases, the former sultans or royal families remained people of some standing. In the mid-1960s, for instance, the ethnic Banjarese governor of East Kalimantan still deemed it necessary to assure himself of the support of the Kutai aristocracy by recruiting some of their number into the provincial bureaucracy (Malley, 1999:83). In Banjarmasin, where the colonial government had abolished the sultanate in 1860, descendants of the royal family remained prominent in the city’s social life. Descendants of the Sultan of Deli in North Sumatra pursued successful careers in the military, whereas in many of Java’s former sultanates the position of sultan was maintained, albeit with strictly ceremonial functions, to a greater or lesser extent.

Since Suharto’s resignation, sultans have been returning to the fore in local politics throughout Indonesia. Van Klinken (2004) points to the need for new local symbols as a possible explanation. As autonomy focuses on the districts, which outside of Java often are former kingdoms or sultanates, these pasts can be invoked as symbols of district unity and identity. Van Klinken (2007:163) shows the attractiveness of sultanic symbols by arguing that they evoke place as much as hierarchy. Sultans unite, ethnically, culturally or both, and are representations of the

<sup>12</sup> In 1945, the Sultanate actively supported Indonesian Independence and declared itself part of the new Indonesian state. In return for this support Law 3/1950 was passed. The sultan, Sri Hamengkubuwono IX received the title of governor for life

<sup>13</sup> Upon his death in 1988, he was succeeded by his son Sultan Sri Hamengkubuwono X (cf. Hugues-Freeland, 1991). Following his father’s example, Hamengkubuwono X sided with the people in times of tension. He gained much acclaim for supporting the anti-Suharto movement in Yogyakarta and, at least in Yogyakarta, was considered a candidate to succeed Suharto (Strassler, 2000:74).



‘social capital’ of the group. They symbolize integrative age-old customs that give identity and meaning to the local in modernity. Sultans are authoritative symbols of local legitimacy. They are not only ‘indigenous peoples’ par excellence who legitimate the rights of an ethnic group in an area, but in a wider context they symbolize that area’s history and its social uniqueness.

Examples of such legitimizing symbolism of sultans include the revival of Malay sultanates in West Kalimantan (Sambas, Pontianak), which, as Davidson (2003:85-86) shows, form a counterweight to rival Dayak claims of indigeneity in that province. Likewise, the ethnic and religious rallying points offered by the Sultanates of Ternate and Tidore in the bloody North Maluku power struggles of 1999 are examples of the uniting potential of sultanic symbolism (Van Klinken, 2001:5-7, 16, 25-25; 2007:6).

A more peaceful use of the unifying qualities of sultanic symbols takes place in the district of Kutai Kartanegara, which lies to the north of Paser.<sup>13</sup> In 2001, Kutai Kartanegara’s district head crowned Sultan H. Aji Muhammad Salehudin II, thus reviving that sultanate.<sup>14</sup> As the “oldest kingdom of Indonesia” (*Kompas*, 17 November 2001), the sultan was deemed a worthy and essential aspect of Kutai Kartanegara’s identity by the district head, while the royal ceremonies and the splendour of the palace were hoped to generate extra tourism in the district.<sup>15</sup> Kutai Kartanegara is among the richest districts of Indonesia. When oil was discovered in Kutai in 1902 the revenues almost instantly made its sultan one of the richest persons in the Dutch Indies, owning, for instance, the largest number of private automobiles despite a lack of suitable roads in the area (Magenda, 1991:17-18). Presently the district possesses large oil, coal, and gas reserves, and has a small timber industry.

The current sultan officially lives in a newly built palace which is incorporated in a tourist theme park. His position is mostly symbolic, although his council, in matters of importance, is publicly sought by district officials (*Kaltim Post*, 20 September 2002; 29 May 2003, 19 December 2004, 5 March 2005). The sultan is paid a salary from the district revenues, which is determined by the district head. It is hoped, however, that the revenues from tourism will in time suffice to provide for the sultan’s expenses (*Kaltim Post*, 30 September 2002).

<sup>13</sup> In 1947 the Sultanate of Kutai Kartanegara ing Martadipura entered the federation of East Kalimantan as an autonomous region (*Daerah Swapraja*) headed by its sultan. After the federation had joined the Republic of Indonesia, Kutai’s status was reduced to that of a special region (*daerah istimewa*). In 1959 this status, and that of the sultan, were ended and Kutai was given district (*kabupaten*) status while the Sultan symbolically handed over his power to the government administration in 1960. Following regional autonomy, the district of Kutai was divided into three new districts (East Kutai, West Kutai and Kutai) and the municipality of Bontang in 1999 (Law 47 of 1999). Kutai was renamed Kutai Kartanegara in 2002 (Regional Government Regulation 8 of 2002), referring to the original name of the sultanate.

<sup>14</sup> For an extensive discussion of events in Kutai see Mahy (2005).

<sup>15</sup> However, before the sultan’s inauguration popular elements in Kutai’s coastal zone campaigned for secession from the district and the establishment of a new, independent district. Home to Kutai’s gas industry, the coast could well fend for itself. It can be argued that Kutai’s district head revived the sultanate to prevent secession. So far this strategy seems to have been effective.

## Return of the Sultans?

At the national level, various sultans have formed the Indonesian Palaces Communication and Information Forum (*Forum Komunikasi dan Informasi Keraton se-Nusantara*), a group whose meetings often coincide with the Indonesian Palaces Festival (*Festival Keraton Nusantara*) at which representatives of Indonesia’s royal families gather to discuss royal matters and enjoy performances of palace arts and culture. Consecutive meetings of the Forum saw the sultans become more adept in speaking to the press and building up a political position. While the Sultan of Ternate stated in 2002 that what the sultans really wanted was to have their lands back (Van Klinken, 2004), the 2004 meeting saw various representatives arguing for a return of the sultans to politics and a position in the government system (*Jakarta Post*, 4 October 2004). At the 2006 meeting the representatives vowed to uphold the unity of the Indonesian Republic, and recommended that a law be made to formally arrange the position of communities – sultanates among them – that pertained to *adat* law. (*Tempo Interaktif*, 12 September 2006).

The Sultan of Ternate may have spoken his mind thoughtlessly in 2002, but his remark unveiled an essential point. In 2003, the Sultan of Kutai Kartanegara referred to the ancient borders of the sultanate to legitimate his demand for 3,3 trillion rupiah from the Kutai Prima Coal (KPC) company that operates a mining plant in the neighbouring district of Kutai Timur.<sup>16</sup> However, the sultan’s claim was opposed by the ‘Grand Sultan’ of Kutai. An individual who based himself on his lineage and historic documentation to argue that he was the actual guardian of Kutai’s *adat* lands and natural resources (*Kaltim Post*, 25 August 2003).<sup>17</sup> The ‘media-launched’ Sultan of Kutai Kartanegara, the Grand Sultan felt, only had authority over the palace culture. The *adat* land of Kutai, he argued, such as the land that KPC operated on, had traditionally been under the governance of his family. The 68 year-old Grand Sultan intended to undergo a DNA test, should this be required, to prove his descent (*Kaltim Post*, 23 September 2003), although one might wonder whether descent can still be a sufficient qualification to take up a management position of regional importance.

Sultan Salehudin II of Kutai Kartanegara managed to maintain his position in the face of this adversary. Part of his strategy was to have himself publicly proclaimed ‘Grand Sultan’ whenever the occasion arose, thus undermining his opponents’ credibility. When, for instance, in late 2005 the election of the mayor of nearby Bontang was due to take place and one of the candidates came to visit Sultan Salehudin II, the headlines in the newspaper read “Zoro [the candidate’s nickname] requests the blessings of the Grand Sultan” (*Kaltim Post*, 18c November 2005).

In a similar case, in the former sultanate of Deli, North Sumatra, claims from members of the royal family that former Dutch plantations were historically communal lands (*tanah ulayat*) held by their ancestors were decidedly rejected by officials of the local National Land Agency. The NLA officials based themselves on

<sup>16</sup> At the time around 348 million euros, or 386 million US dollars.

<sup>17</sup> Competition over the title of Sultan is as common in the present as it was in the past. In addition to Kutai, the Javanese Sultanate of Surakarta can be cited as an example (see *Jakarta Post*, 11 September 2004).

a law stipulating that former plantations can never be communal land, whatever their history, but by definition become state land (*Media Indonesia Online*, 28 August 2003).<sup>18</sup>

A final example concerns a case from Tenggarong, the capital of Kutai Kartanegara. Two members of the royal family claimed ownership of land in central Tenggarong basing their case on old land documentation in their possession. After bringing the case before the regional court, it was finally concluded by the Indonesian Supreme Court in 2002. The Supreme Court ruled in their favour, but the local NLA office refused to draw up a certificate of ownership (*Kaltim Post*, 4 December 2002) for the claimants. Officials at the NLA office in Paser told me that the land in question superseded the maximum size allowed for individual property, which was why the NLA in Kutai Kartanegara ignored the Supreme Court's ruling.<sup>19</sup>

Nonetheless royal descent can pay off. Employees of KPC told me how their company had informally settled the matter with the sultan and grand sultan of Kutai Kartanegara so as not to endanger the continuity of their operations through time-consuming legal processes. The sum paid was nowhere near the requested amount, they added, but still a substantial amount of money.

Yet such unexpected income can cause jealousy and competition within royal families as much as among common people. A branch of the royal family of Paser owned a stretch of prime land in Singapore through Aji Nyesei, an ancestor turned trader who was a highly successful businessman in the 1920s. Most members of this branch actually lived in Singapore, but some remained in Paser. Recently the land was needed for city development and the government of Singapore paid the family a compensation based on contemporary land prices. The money was shared among the relatives, turning a few individuals in Paser into instant rupiah millionaires and billionaires. Several bought new cars or motorbikes: one could afford to buy a handsome new house, a car and quit his job. He now spends his days sleeping and watching television, much to the envy of his former colleagues at the office of the district head where he used to work as a clerk.

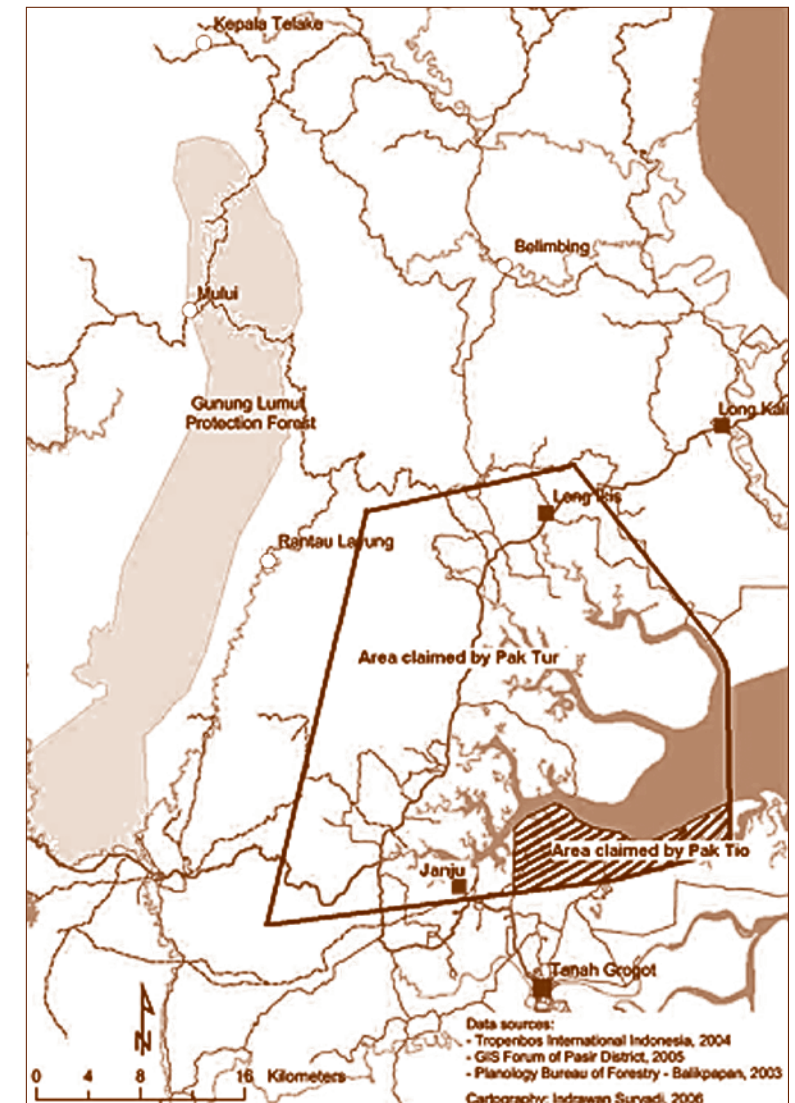
These developments form the background to Tur's land claim. Essentially events in Kutai Kartanegara, Medan, West Kalimantan and Singapore show that a land claim based on royal descent can go many ways. Sultans have been reinstalled, as in Kutai Kartanegara, and have become the figureheads of local identity, as in Sambas and Pontianak. Yet Tur was not interested in recognition of his descent for purposes of ceremony or prestige. He had no interest in the former palace, nor in the royal heirlooms on display there. Tur's interest lay in a return of what he perceived as his land by right of birth.

<sup>18</sup> The law in question is Ministerial Regulation 5 of 999 on *Hak Ulayat* (see chapter 10). In fact, the definition of communal land used in this law makes it clear that any such land has to be used by a community to sustain their daily needs and in a historically continuous process. Private ownership by sultans by definition does not qualify as communal land.

<sup>19</sup> Another member of Kutai's royal family claimed ownership of 105,000 hectares of forestland. The land had been given out in concessions to logging companies owned by children and business partners of Suharto. The plaintiff jumped on the anti-corruption, collusion and nepotism bandwagon by detailing the injustice done to him by the Suharto clique (*Republika*, 24 November 1998).

## 9.6 Tur in court

Tur was well known and respected in Tanah Grogot. A middle management civil servant with the district government, he was also elected treasurer of the LAP (*Kaltim Post*, 31 July 2003), and a member of several Muslim charitable organizations. While preparing his land claim, Tur consulted these bodies. His seniors in the government and in the charities did not object, while the LAP board took the stance that the land claim was a private undertaking by one of its members and



Location of Tur's and Tio's land claims

hence not their business. He also contacted some of the companies operating on the land to find out their stance on a change of landlord. Receiving mostly favourable results, Tur was assured of the backing, or lack of objections, of a wide array of authorities and parties. Two historic documents formed the base of Tur's claim. The first was the map described in the introduction of this chapter and the second was a notification from 1898 in which the *Resident* confirms Sultan Muhammad Ali's right to the territories of Samuntai, Adang and Muru. Tur, a descendant of Khaliluddin through his father and of Sultan Muhammad Ali through his mother, claimed that land as his lawful inheritance. It was a substantial claim. The government estimated the land to cover some 1,160 square kilometres of prime coastal land, which equalled around ten percent of the district's territory or 22 percent of its fertile coastal zone. It contained agricultural plots, villages and houses, large-scale plantations and mining operations. It was, in short, of considerable social and economical importance to the population and the economy of the district.

Tur took a realistic approach to the possible results. In his opinion, the land concerned covered some 300,000 hectares. Claiming all of this would definitely lead to trouble with the population and the government so he decided to leave out all land in use by local villagers -roughly half of his claim. A further 40,000 hectares were used by a state palm oil enterprise and were hence out of boundaries as well. This would leave him some 110,000 hectares, which he intended to develop together with the district government on a 30% - 70% (Tur-government) basis.

Tur's first attempt to get formal recognition of his heritage claim dates from the early eighties. He claims that the district government of that time was willing to endorse his claim in exchange for the financial equivalent of six cars. Tur did not have that money and decided to leave the project for another time.

With the arrival of decentralisation and the increased government attention for the interests of the local population Tur decided to revive his claim. In early 2002 he sold part of his claim -fifteen hectares of forest land- to a third party. When in September 2002 two other persons started to cultivate the land and claimed it to be their property, Tur instituted a lawsuit against them with Paser's regional court, charging them with land theft. The court accepted Tur's map and documentation as evidence of his right to sell the land and sentenced the perpetrators to a suspended prison sentence.

One of the two defendants, whom we shall call Tio, disputed the court's verdict. Tio was of royal descent as well and claimed to have documentation proving his ancestors' ownership of the land. Remote relatives, Tur and Tio were thus united in maintaining the continued validity of the sultanate's rights to the land, but disagreed on who had the stronger claim. The local population was divided, some contesting the claim and arguing local *adat* rights to the land. Although neither Tur nor Tio agreed to those, Tio was first to respond and did so by publicly denouncing the existence of other traditional rights than those of the sultanate. In the fall of 2002 Tio and five of his relatives filed a lawsuit against Tur and against 93 families living on the land of which Tio and his relatives claimed ownership, altogether some 15,000 hectares.

To the relief of many, the regional court found Tio's documentation insufficient.<sup>20</sup> During the court's session Tur requested to have his claim judged separately from Tio's to have its validity again confirmed, but this was refused. The court rejected Tio's claim because of his poor evidence, but remained silent on the validity of Tur's documents. Both parties were dissatisfied, although Tur felt that his claim was implicitly recognized.

Tio then brought the case before East Kalimantan's provincial court of appeal which, in February 2003, fully endorsed the ruling of Paser's regional court without adding new considerations of its own. On the request of Tio, the regional court secretary then sent the case to the Supreme Court in Jakarta in late August 2003. As this court had a considerable backlog, no decision had been taken at the time of writing. However, the Supreme Court's pending decision is of great importance to Tio, Tur, the villagers working and living on the land, and to the district government, which could lose authority over ten percent of its best land.

Whilst awaiting the decision of the Supreme Court, Tur filed another claim with the regional court in November 2004. Farmers from the village of Janju, which fell within the boundaries of the area Tur claimed, were clearing new fields on forest land. As Tur, considered these lands part of his claim he sent them word that they were trespassing and that he would press charges if necessary. When his warning did not have the desired result, he sued 67 of the village's families for 120 hectares. The land issue was becoming serious, but the court case took a rather unexpected turn. During the second court session Tur's legal representative quit for undisclosed reasons while Tur himself remained absent at the third, fourth and fifth sessions. His continued absence led the court judges to declare that his claim could not be maintained, but not without concluding that the plaintiff had apparently lost his desire and was no longer serious about his claim.

That the claim could not be maintained under such circumstances was clear, yet the conclusion that Tur was no longer interested was not. He could have withdrawn the case or made his desire to discontinue known in another way. Tur did not want to drop the case of his own accord. Another interpretation of the sultans' rights, this one by opponents, was the cause.

## 9.7 The claim in society

Tur had ensured the LAP's passive support of his claim as he felt that he needed the consent of a powerful *adat* authority. Most of the LAP's leadership stems from the district's government apparatus, many being colleagues, while its leader is a descendant of Sultan Muhammad Ali and hence a remote cousin of Tur. As a member of the LAP's board, Tur was certain that this organisation would not oppose him, while his connections in society and the government could lend support to the implementation of a positive court decision. He did not expect much opposition from the PBA, which maintained an aloof isolation from the LAP, nor from any

<sup>20</sup> This decision did not mean that the *adat* rights claimed to the land were therefore considered valid by the court. The Basic Agrarian Law lists a variety of documents that can serve as proof of ownership of land and the judges only decided that Tio's documents did not meet the law's requirements.

other social movements since he would not, or so he claimed, demand the return of any land in use by the population. Maintaining that his rights would not interfere with the social circumstances in the district Tur lodged his claims which ended with the result discussed above.

While in court, details of Tur's and Tio's claims came to the attention of wider society. Both parties were blackening the other's name and spreading wild and vicious rumours about their opponents. Among the farmers living on the disputed land the notion arose that two potential sultans were fighting in court, assisted by allies in the government and the district's business circles, over who owned the farmers' land. When the court would reach a decision, the story went, the farmers would almost certainly be cleared from the land. When contacted by alarmed villagers, the LAP was unwilling to get involved but the PBA, who hitherto had displayed little activity in the matter, rose to the occasion. While parties awaited the decision of the Supreme Court, the PBA set about making its stance known. Early in 2004, Bachrudin, the PBA leader, claiming extensive knowledge of the *adat* of Paser, passed what he maintains was an *adat* sentence on Tur in a public PBA meeting. The verdict, called *temberau*, resembled an official warning. It instructs someone to stop what they are doing or face the consequences. Tur did not react and a few weeks later a second *adat* sentence was passed, called *peondang*—anyone could beat up the sentenced person with approval of the *adat* community. By now, Tur was opting for a dialogue with the PBA, which the latter persistently refused. They informed him that the next step would be *penirak bombai*: anyone wanting to kill Tur would have the *adat* community's full consent. Tur decided to temporarily move to Balikpapan, but maintained his claim.

In August, when Tur instigated the Janju claim, the farmers, who considered the land as *adat* land belonging to their community, approached the PBA for assistance.

September 23<sup>rd</sup> saw some four hundred farmers and PBA members gather in front of the district head's office, carrying banners denouncing all claims by sultans' descendants. The PBA leader had informed his police contacts beforehand, and riot police barred the entrance to the office. A PBA spokesperson quickly pointed out that no PBA demonstration was taking place since there was not a PBA uniform in sight, but an *adat* ceremony of which the mainly Javanese police officers obviously had no knowledge. Gongs were beaten, fires were lit and the PBA leader performed magic spells. Those knowledgeable of Paserese *adat* knew that the ritual was to cleanse a house of evil spirits. The message was clear.

Bachrudin was invited to discuss the matter with the district head, a Buginese from Sulawesi, and several senior officials. The next day East Kalimantan's main newspaper reported that the district head had voiced his concern and his interest in local *adat*, while his staff had pointed out that it was impossible for one person to own so much land (*Kaltim Post*, 24 September 2004). Unfazed, Tur retorted in the same newspaper three days later. He stated that he had never been consulted on the land clearings and the villagers could have known about his rights. The land, Tur stated, had been the private property of Sultan Muhammad Ali and hence was his by inheritance. He announced that he would refer the case to the regional court, which he did in November, as described above.

Then, one of Tur's houses burned down. According to the official report a

neglected fire in a neighbour's backyard was to blame, but on the street people spoke of magic. Not just any magic, but renowned Paserese black magic that was invoked during the demonstration a few weeks earlier. The PBA neither confirmed nor denied the invocation of mystical powers or involvement in the fire in any way, but Bachrudin's star was on the rise. Summoned to a meeting with the district government, Bachrudin explained that according to the *adat* of Paser the sultans, whose ancestors were migrants, never owned any land in Paser. They were guests, nothing else. Valid law had always been Paserese *adat*, to which even the sultan had to adhere.

The district government's legal department drew up a request to the Supreme Court to treat the case with urgency, and added the PBA's recommendations as those of an authoritative *adat* organisation. Tur, as mentioned above, seemed to have lost heart and awaited the Supreme Court's decision in Balikpapan.



PBA 'adat ceremony' in front of the district head's office on 23 September 2004 (photo *Kaltim Post*).

The Supreme Court replied to the district government's request that the Court intended to consider the case in due time, although contacts assured Paser's officials by telephone that the Supreme Court judges read the regional court's decision as stating that the claims of Tur and Tio are not acknowledged. Whatever the Supreme Court will rule, it seems unlikely that it will favour the descendants of Paser's sultans.

## 9.8 Concluding Remarks

The two land claims made by Tur and Tio that are the subject of this chapter are a further illustration of the intricate nature and diversity of such claims in Indonesia since *reformasi*. Whereas the previous chapters largely dealt with interests that were presented as communal, even though appeals to them frequently are on an individual basis, the claims in this chapter are strikingly individual. Yet, as with the *adat*-based claims that are so prominent in the preceding chapters, they are steeped in references to Paserese history and traditions. That *adat* and sultanate versions differ provides the basis for what could have been an essentially legal



process; two parties submitting a conflict to a court of law in order to obtain a decision. Yet the claims were dealt with in a manner involving a broader spectrum of social and economic factors stimulated by popular as well as government interest. Tur's claim could perhaps have succeeded if he had carried out more extensive preparations. As things were he appreciated the possibilities *reformasi* offered to sultans in the regions, but he failed to correctly assess the opportunities it brought others as well.

### Traditional views on authority

Tur's case is illustrative of governmental perspectives of *adat*, which see it as continuously governed by, and adhering to higher, official authorities. A continuous line of sultanates, colonial administrators and Indonesian government provided a class of rulers to the mass of the population. The *adat* of the population could be linked to these rulers, or it could function as a local authority undistinguishable from above. Tur's preparations for his claim followed this line. He ensured the support of local government colleagues and of the LAP, the *adat* organisation affiliated with the regional government. Tur omitted to enlist backing in the coastal areas to which he was to make a claim, assuming that authority was still wielded along the lines of the best New Order tradition. This miscalculation became clear as the case evolved and Tur's became a rewarding adversary for the PBA to display and expand their influence. Ironically, and contrary to Tur, their take on authority was one in which tradition provided a source that had to be shaped to fit with the present.

PBA strategy bears witness of considerable insights into the workings on Indonesian government authority. Defying a prohibition on demonstrating by invoking an *adat* ritual and publicly threatening Tur with physical violence and possibly death while claiming to follow *adat* rules show a keen sense for the loopholes in official law that traditional authority permeated. Nonetheless the PBA did not grow overconfident. When Tur's houses burnt down, the allusions to black magic were not openly confirmed, which could have spurred accusations of arson. On the other hand, however, maintaining a sense of mystery regarding Bachrudin's magical abilities might have worked even better in confirming his status as a real *adat* leader, to the best of Paserese traditions.

It was in this too, that Tur misinterpreted the times. Such sultans as returned to prominence contributed something to their area that was useful in the light of *reformasi* developments. Tur did not contribute. He was a relatively out-of-sight government official and much preferred things to stay that way. He did not aspire to ritual, public prominence or the ceremonies of the sultanate. Bachrudin and his PBA, on the other hand, brought ritual, Paserese identity, drama and indigenous culture to regional society. When it came to the requisitioning of traditional authority in the era of post-New Order *reformasi*, Tur was heavily outclassed.

### The role of government

Tur's initial results were promising. His strong documentation and modest initial claims brought him success in court in a time when cases concerning traditional or historical rights –most of them *adat*-based- stood little chance of success. The

strategy of going through the court and defining his claim in terms of official inheritance law downplayed the historical aspects in favour of modern legal circumstances. As with the translation of Lundayeh *adat* into the jargon of official law that was discussed in chapter 6, Tur managed to successfully transpose the legal essence of a land claim that would have been difficult to maintain in its original, history-based shape, into a form that was convincing to twenty-first century post-New Order judges. Tur might well have been able to carry on successfully claiming plots of land in this fashion. His first success created a precedent to which others should have followed, and the entire affair would not have come to the attention of the government at the stage at which it did.

The attitude of the regional government proved a factor of importance. Tur had ensured the quiet support of various fellow government officials through his position in the LAP, but not all officials were LAP members nor did the LAP have contacts in all departments. The legal department, for instance, held no contacts of Tur's, and they were instrumental in contacting the Supreme Court in Jakarta and indicating the regional government's desire for a rejection of the case. Yet the government was spurred into action only after the PBA had demanded its attention for the social consequences of Tur's claim. Is that a bad thing? I think not. In a nation governed by the rule of law it is not for the government to meddle in a case under consideration by a court of law. One might question, of course, whether it is for that same government to appeal to the national Supreme Court at a consecutive stage and provide it with unsolicited advice. However, as it was the regional government to which the population would address its complaints, on whom the PBA applied pressure, and as the regional head elections discussed in chapter 8 were coming up shortly, its choice to lobby the Supreme Court did make sense. If Tur would win his case at the Supreme Court, Paser's regional government was likely to become a party in his claim before long and, after all, Indonesia's national government is still aspiring to have the nation become subjected to the rule of law. The regional government's actions can be seen as one of the examples given in this book that this process is still underway.

### The courts of law

The manner in which the various courts of law dealt with the case, puts one in an optimistic mood regarding the increasing influence of rule of law in Indonesia. As I pointed out in chapter 8, Indonesia's courts have a widespread reputation for corruption among the population. One would expect Tur to have ensured his success with the relevant judges if this was indeed so easy. He had financial means and would, if his claim was granted, become substantially wealthier in the near future. Yet aside from the first case, neither the district court nor the East Kalimantan court of appeal awarded his claim. Considering that the cases were, at the time, relatively minor with regard to public interest and government attention, and considering that Tur's opponent, Tio, did not get his claim awarded either, this could be seen as suggesting that the reputation for corruption was unwarranted at least in these instances. Moreover, the Supreme Court's refusal to openly take the request and material sent by Paser's government into consideration, could be seen as another

indication of this, even though informally information was still being exchanged.

However, these indications of a possibly increasing rule of law in these state institutions should not be seen as indicative for the legal situation at large. Tur's absence at the sessions of the district court in which his third claim was being considered had, for instance, nothing to do with him losing interest, as the judge suggested. Tur was quite possibly in danger of his life, and this from an organisation that had uttered its threats publicly. When it came to protection by law, this situation indicates, the situation still left much to be desired.

# Can we get hak ulayat? 10

## Claiming communal land

In the preceding chapters the focus has mainly been placed on informal or semi-formal procedures of settling land ownership issues and conflicts over land. Emphasis has been placed on the working and authority of *adat* in community settings and on the usage of *adat*-derived power in larger social circles. The image that comes to the fore sees people preferring to arrange their affairs among themselves involving known authorities, with as little reference to government institutions as possible. Asides from government reputations for corruption and untrustworthiness, such an approach makes sense for those attempting to control their dispute's outcome. Whereas an *adat* leader is a well-known local individual and individuals hold at least some notion of local *adat*, a judge at the district court is an individual as unfamiliar to *adat* communities as such communities are to official land law. The distance between the two systems is considerable, each operating and existing in its own realm but with little connecting the two. 'Adat representatives' like the PBA or the LAP attempt to bridge the gap and channel *adat* authority into regional politics. Such attempts can be carried out in highly diverse ways; from the PBA's and DADK's protest marches to the more subtle attempts of the LAP.

This chapter concerns a major issue in getting recognition of *adat* claims; attempts to get *hak ulayat* land claims officially recognised in both Nunukan and Paser. Whereas Nunukan's district government has recognised *hak ulayat*, Paser's government intended to formally record the absence of valid *ulayat* in a district regulation, but it abandoned this plan after widespread popular protest.<sup>1</sup> I argue that whereas Indonesian law has undertaken considerable steps in defining the place of *hak ulayat*, a strictly legal approach to studying district government considerations of *ulayat* claims is too narrow to be of much use. The influence of local notions of *hak ulayat* and the stance of local authorities on the subject can be better understood through the inclusion of social, political and power relations which bring more, and other, interests to the fore. Such an analysis shows that not only is the law not the only authority in regulating *hak ulayat*, but it is also caught in an inconvenient split between aspirations to nationwide applicability and the demands of local diversity.

### 10.1 (Re)claiming *hak ulayat*

*Hak ulayat*, a legal term connoting communal rights of an ethnic community to land based on that community's *adat* (custom or tradition), is among the most intrigu-

<sup>1</sup> See chapter eight for a discussion of the role of the draft regulation in the period preceding Paser's 2005 district head elections.



ing concepts in Indonesian land law. Rich in history and burdened with political and cultural associations it rose to prominence in local politics when Indonesia’s government decentralized administrative authority to the regional level. Throughout Indonesia ethnic groups demanded the return of ‘their’ *ulayat* lands and recognition of their right to that land. In West Sumatra, the homeland of the Minangkabau godfathers of *hak ulayat*, district governments energetically commenced to institutionalize customary *hak ulayat* as formal law.<sup>2</sup> The implementation proved itself to be considerably problematic as contested claims, varying interpretations of *adat* rules and disagreements over *adat* authorities showed that what had been thought of as the strong and clear Minangkabau *adat* does in fact contain a broad local diversity (cf. F and K von Benda-Beckmann (2001), Biezeveld (2004), McCarthy (2005)).<sup>3</sup>

In very few areas outside of West Sumatra did district governments issue regulations honouring, or even considering, claims of *ulayat* or other *adat*-based land rights, although *adat* has made inroads into the policies of numerous districts. Various district governments have issued regulations on the position of *adat* and *adat* organizations, but most do not refer to *adat* land as such. A few mention *adat* authority regarding land as a condition limiting the influence of new regulations, but examples of regulations furnishing concrete rights are very hard to come by.<sup>4</sup> When it comes to regional regulations pertaining to *ulayat* I know of three cases: Lebak (Banten), Nunukan (East Kalimantan) and Kampar (Riau).<sup>5</sup> The regulations from Lebak and Nunukan are formal recognitions of *ulayat* claims by the Baduy and Lundayeh communities respectively. Both regulations contain details on the territory and authority of *adat* in the areas, and, in themselves, seem to meet the requirements of Ministerial Regulation 5 of 1999 entitled ‘Guideline to solving the problem of *adat* communities’ *hak ulayat*’.<sup>6</sup> The regulation from Kampar describes the status of *ulayat* land in that district and the rights, authorities and responsibilities of those owning it. It does not recognize any claims of *ulayat* rights, but seems to be a preparation for doing so.<sup>7</sup>

2 As Minangkabau legal scholars proudly point out, *ulayat*, as a legal term, is thought to derive from the *Minangkabau* ‘*wilayat*’, a concept connoting the communal land of a community.

3 As far as I could ascertain, four out of West Sumatra’s nine districts issued regulations organizing *adat* governance at the *nagari* (village) level. Three of these (Agam, Lima Puluh Koto and Tanah Datar) include *hak ulayat* among its responsibilities. Borders, size and usage rights of *ulayat* land must be determined at the *nagari* level and confirmed in a *nagari* regulation (see for instance *Nagari Sungai Kamuyang* regulation 1 of 2003).

4 Examples of the latter include regulations from Paser (3 of 2000), Luwu Utara (12 of 2004) and Kutai Barat (12 of 2002). Numerous districts have issued regulations on ‘Improving, Preserving and Developing *Adat* and *Adat* Organizations’ (*Pemberdayaan, Pelestarian dan Pengembangan Adat Istiadat dan lembaga Adat*). Although such regulations usually do not mention authority over land, they do normally include *adat* authority in an ‘*adat* area’ (*wilayah adat*), a definition that is both broad and open to varying interpretations (see for instance Tyson’s (2006) findings for South Sulawesi).

5 Lebak district regulation 32 of 2001, Nunukan district regulation 4 of 2004 and Kampar district regulation 12 of 1999.

6 ‘*Pedoman Penyelesaian Masalah Hak Ulayat Masyarakat Hukum Adat*’.

7 Nunukan followed a similar strategy: the *ulayat* right of the Lundayeh is recognised in district regulation 4 of 2004 which follows upon regulation 3 of 2004. The latter regulation defines and specifies the conditions under which a community qualifies as an *adat* community and is eligible to claim communal land.

The implementation of all three district regulations has met with problems, most commonly social tensions in the form of other local groups disputing, or ignoring, the status of *ulayat* land (cf. Moniaga (2005) on Lebak; Bakker (2006) on Nunukan). In Kampar social problems actually appear to prevent further steps towards the recognition of *ulayat* land claims.<sup>8</sup>

Formal recognition of *hak ulayat* claims is thus very rare indeed; -out of Indonesia’s hundreds of districts only Lebak and Nunukan have issued district regulations that formally recognize *ulayat* rights.<sup>9</sup> If this administrative result appears to doom claims of *hak ulayat* from the start, the hundreds of claims that are being made throughout the nation seem to indicate that a popular notion of *hak ulayat* as a legitimate and realistic right nonetheless exists. Communities and ethnic groups throughout the nation have seized the change of government and the extension of the district governments’ administrative powers to argue for a return of their ‘traditional lands’. This request brings Indonesia into the worldwide debate on indigenism, and demands a reaction from the Indonesian government.

## 10.2 State law and *ulayat*

The Basic Agrarian Law (BAL), Indonesia’s main legislation referring to land under the authority of the National Land Agency (NLA), contains a reference to *hak ulayat*. Article 3 states:

Taking into account the provisions laid down in Articles 1 and 2 the effectuation of *hak ulayat* and rights of *adat* law communities that resemble it, in as far as proof indicates their continued existence, must be in such a way as to be in accordance with the national interest and the State, which is based on the unity of the people and may not be at odds with laws and other higher regulations.

Ostensibly containing recognition of *hak ulayat* and similar rights, the Article poses the broadly formulated limiting conditions that national and state interests, as well as all legislation higher than *ulayat* rights, must prevail. A down-to-earth reading of the Article thus leads to the conclusion that *ulayat* rights can be considered valid if no other claims based on BAL-derived rights (the BAL being a higher law) or other laws dealing with land rest on the claimed territory. Furthermore, the recognition of *ulayat* claims can be withdrawn if other parties receive formal land rights to the land and the claimants have not converted their *ulayat* claim into a BAL-derived land title.<sup>10</sup> Hence, even a formally recognized *ulayat* claim to otherwise virgin

8 No usable map of *ulayat* land in Kampar appears to exist (see Kompas, 26 April 2007). The lively report of the Direktorat Jenderal Perlindungan Hutan dan Konservasi Alam (2004) gives an overview of further practical problems and popular opposition surrounding the recognition of *adat* land rights in the district.

9 On 5 August 2006 the website of the Indonesian Ministry of the Interior listed 439 districts and municipalities (see <http://www.depdagri.go.id/index.php>).

10 This is however not as easy as it sounds. Article 3, through a reference to Article 2, refers to Article 33(3) of the 1945 Constitution, which states that all land in Indonesia is under the control of the state. Significantly, as Fitzpatrick (2007:137) writes, *hak ulayat* is not listed as a right that is converted to statutory title by the BAL.



land (insofar as this can be said to exist) is, strictly speaking, not guaranteed to succeed.<sup>11</sup>

Article 3 of the BAL significantly limits the validity and potential of *ulayat* rights, but it does not end them. However, communal title, such as *ulayat* land would require, does not exist. Land registration, and thus land title, is allocated on an individual basis. Even if the BAL does not end *hak ulayat*, it does little to improve or guard its claimants.

Nonetheless, the BAL was intended to have a strong social base. Tjondronegoro (1991:20) writes, alluding to Article 6 of the BAL, that the social function of land has priority over individual and *adat* rights.<sup>12</sup> The Article was intended to provide legal security to landless masses accessing this resource and to protect them from landlordism (Tjondronegoro, 1991; Soemardjan, 1962). Interestingly, the Article was said to be derived from *adat* principles (Fitzpatrick, 1999:76) and aimed at the establishment of a balance between the interests of the individual and those of the community.<sup>13</sup> It is the authority of the state to provide the people with certainty and order regarding their use of land and natural resources. The functioning of local officials in managing the land on behalf of the population has been likened to an *ulayat* system (Soetikinjo, 1987) for this reason. Daryono (2004:121-2) goes so far as to speak of ‘state *ulayat*’ - an authority which the state receives from the people. He immediately points out, however, that such state *ulayat* often conflicts with the interests of actual *adat* communities.

Verifying and settling *adat* land claims hence is hence complicated by the diverse constellations in which formal authorities may be involved. Yet claimants are not uniform either. For example, a recent research report written by Como Consult (2001:48-9) for the World Bank/National Land Agency cites three categories of claimants for the Javanese district of Kendal:

- Communities bullied to release their land during the Dutch period, now citing customary law as a basis for demands for restitution.
- Peasants forced to relinquish their land during the New Order period against unfairly low compensation.
- People who voluntarily released their land, but now claiming to be among the victims of the New Order regime.

Settling *ulayat* claims is thus an intricate and sensitive issue, frequently hampered by the diverse characters of the claims, the claimants, and the authorities involved. “Can we get *hak ulayat*?”, the title of this chapter, is a question a villager asked me in the mountains of Paser after my first few weeks there. At the time I did not know, and told him that. Now, my answer would have to be: “according to formal

<sup>11</sup> One could think of remote highland communities in, for instance, Papua, Central Sulawesi or Central Borneo. The Krayan highlands of the Dayak Lundayeh are an example: even without logging companies or other outside enterprises established in the area the land is, formally speaking, still in the first place subject to the Indonesian state and only then to such *adat* rights as may exist.

<sup>12</sup> Article six states that all land has a social function (*semua hak atas tanah mempunyai fungsi sosial*).

<sup>13</sup> General elucidation of the BAL, chapter II Article 4.

law, perhaps you can. Although it seems impossible in practice, do not let that deter you from trying”.

### 10.3 Solving the *hak ulayat* problem? Ministerial Regulation 5 of 1999

The BAL does not contain definitions of *adat* and *hak ulayat*, but its elucidation contains the statement that *hak ulayat* is similar to *beschikkingsrecht van de gemeenschap*, a concept originating in Dutch colonial law and used extensively by the *adat* law researcher Van Vollenhoven.<sup>14</sup> Holleman (1981:43) summarizes Van Vollenhoven’s concept of *beschikkingsrecht* <sup>15</sup> as

...the fundamental right of a jural community freely to avail itself of and administer all land, water and other resources within its territorial province for the benefit of its members, and to the exclusion of outsiders, except those to whom it has extended certain limited, and essentially temporary, privileges.

Left out are Van Vollenhoven’s points that the community is held liable for unaccountable delicts within the area, and that the community cannot permanently alienate its *beschikkingsrecht* over land (Van Vollenhoven, 1932-9; Sonius, 1981: XLVII). In other words, Van Vollenhoven believed *beschikkingsrecht* to be an unalienable right, at least from the perspective of the community.

This is an important point as at least the first two categories of claimants in the Kendal case discussed above might find legal grounds in it if, as the BAL states, *hak ulayat* is equal to *beschikkingsrecht* and if they can prove themselves to be ‘jural communities’.<sup>16</sup> These *rechtsgemeenschappen*, as Van Vollenhoven called them, are summarized by Ter Haar (1950:16) as ‘organized groups of permanent character with their own authority and material and immaterial capital’<sup>17</sup>, whose rights to land and water define them as subjects of law, partaking in judicial matters. Holleman (1981:43) points out that ‘jural’ is there to convey the legal character of these communities’ autonomy, which sets them apart from other, more or less cohesive social organizations.<sup>18</sup>

<sup>14</sup> See Van Vollenhoven (1909:19-20 or 1932:9-11) for extensive definitions, or Ter Haar (1981:XLVI-XLVII) for a short but concise English translation of Van Vollenhoven’s 1909 definition.

<sup>15</sup> ‘*Beschikkingsrecht*’ is often translated as ‘right of avail’ (Holleman, 1981:278) and more recently ‘right of allocation’ (Burns, 2004:15). Translation entails considerable semantic difficulties and, unwilling to broach a well-published problem, I abstain from using an English term here (see also Thorburn, 2004:35-6 for a discussion of the problem of translation). *Van de gemeenschap* (of the community) is usually missing in English translations, although these words mark the communal nature of *beschikkingsrecht*.

<sup>16</sup> The three categories in Kendal were: 1) Communities bullied to release their land during the Dutch period, now citing customary law as a basis for demands for restitution. 2) Peasants forced to relinquish their land during the New Order period against unfairly low compensation. 3) People who voluntarily released their land, but who are now claiming to be among the victims of the New Order regime.

<sup>17</sup> ...geordende groepen van blijvend karakter met eigen bewind en eigen materieel en immaterieel vermogen.

<sup>18</sup> Burns (2004:14) speaks of “...the distinctive legal significance ...[of]...the customs, conventions and values of the group”. Ter Haar (1950:15-6) places emphasis on custom, ritual and belief as well.

Do such groups still exist in Indonesia today? The number of *ulayat* claims suggests that there certainly are groups who feel that they qualify, although it is unclear whether they have taken any notice of the legalistic and theoretical debates on the nature of *ulayat* and the conditions successful applicants should meet. Claims usually follow the simple yet clear formulation of ‘this is our land’ and are substantiated by references to historical motives, traditional usage and *adat*. However, many of today’s claims refer to past situations that have come to an end at an earlier time, often through third parties receiving formal land rights to the area. As discussed in chapter three, *adat* does not always guarantee legitimacy and judging the merits of an *adat* claim must be a specialized affair that includes both field research and historic data. In the days of Van Vollenhoven and Ter Haar, the place of *adat* rights within colonial law was a highly relevant issue as that law was still being formulated and was susceptible to change. Nowadays those demanding formal recognition of *adat* rights have decades of centralistic rule, in which denial of *adat* was commonplace, to overcome. At the local level success is certainly possible, but a reformulation of the position of *adat* in national land law will demand sustained and considerable advocacy and championing. This is required not just of *adat* communities in the forest, but at least as much by lobbyists in three piece suits in the corridors of Jakarta’s bureaucracy.

In 1999, the *ulayat* question was raised by the then Minister of Agraria/Head of the National Land Agency (*Menteri Negara Agraria/Kepala Badan Pertanahan Nasional*), who issued a regulation specifically instructing regional level governments on how to deal with *hak ulayat* claims. In the press the minister declared that he wanted to “challenge *adat* communities to prove their rights to *ulayat* land, whether they were still valid or not” (*Kompas*, 29 June 1999).

The regulation in question, number 5 of 1999, entitled ‘Guideline to solving the problem of *adat* communities’ *hak ulayat*’, has a clearer approach to *hak ulayat* than the BAL.<sup>19</sup> The regulation contains no reference whatsoever to *beschikking-srecht*, but provides lucid definitions and concepts. Chapter 1 Article 1 defines *hak ulayat*:

*Hak ulayat* and similar *adat* law community constructs (hereafter called *hak ulayat*), are rights that according to *adat* law are enjoyed by a specified *adat* law community to a specified territory that is the everyday environment of its members to exploit the profit of its natural resources, including land, in the aforementioned territory, for the benefit of their survival and daily needs, which are made clear by physical and spiritual relations of descent between the aforementioned *adat* law community and said territory.

Thus those eligible for *hak ulayat* are *adat* law communities. Article 3 of chapter 1 defines these as:

[An] *adat* law community is a group of people united by an *adat* law structure as equal members of that legal community through a communal place of residence or through descent.

<sup>19</sup> ‘Pedoman Penyelesaian Masalah Hak Ulayat Masyarakat Hukum Adat’.

The definition of *hak ulayat* given in the regulation closely resembles Holleman’s summary of *beschikkingrecht*. What it leaves unaddressed is the alienability of *hak ulayat* which, in Van Vollenhoven’s perception, was not possible. This question is made more prominent by the definition of an *adat* law community -whereas the *rechtsgemeenschap* possesses material and immaterial capital next to having its own jural authority, the *adat* law community definition contains no references to property.

Chapter 2, Article 2 names conditions under which the continued existence of *hak ulayat* can be said to exist:

- a. A group of people is encountered who still feel united through *adat* law structure as equal members of a specified community, who recognise the rules of said community and apply these in daily life.
- b. Specified *ulayat* land is encountered which is the daily environment of the members of said law community and the area where the necessities for their daily lives are obtained, and
- c. An *adat* law structure is encountered regarding the administration, authority and usage of the *ulayat* land that is in effect and observed by the members of said law community.

Next, claims are limited. Article 3 states that *hak ulayat* cannot be claimed when the land is owned or used by others in accordance with other BAL-derived rights, or when the government has disowned the land. Regarding the authority and temporal dimension of *ulayat* claims, Article 4 decrees that authority over *ulayat* lands is not only held by *adat* leaders, but also by the national state or other legal bodies. Moreover, if the community so desires, *adat* leaders must register *ulayat* land under individual rights such as those recognised in the BAL, thus effectively replacing their *ulayat* with national land rights.

Yet the regulation concerns future arrangements for continued *hak ulayat* as well. It is possible for an *adat* law community to temporarily hand over rights to land to the state, which may then issue a temporary right of use to third parties (chapter 2, Article 2.2). When the usage period agreed between parties has ended, permission has to be sought from the *adat* community before the land usage may be continued. Permission from the state alone is insufficient. Nor may the state give out rights to *ulayat* lands for a longer period of time than that agreed to by the *adat* law community (chapter 2, Article 4.3). Local district governments are instructed to research the claims of *hak ulayat* (chapter 3, Article 5.1) using the conditions set out in Article 2, and to draw up a district regulation to formally record the (non-)existence of *hak ulayat* (chapter 3, Article 6). If *ulayat* land is encountered, a map must be drawn up to define its area (chapter 3, Article 5.2).

Clearly, the interpretation of *hak ulayat* used here differs from Van Vollenhoven’s *beschikkingrecht*. The regulation considers *hak ulayat* to be an alienable right as no *hak ulayat* can be claimed if the land is owned by a third party under other, BAL-derived rights. The regulation hence contains possibilities for the recognition

of *ulayat* rights in areas where no other land rights are yet in force, but how many such areas do still exist in Indonesia today?<sup>20</sup>



Gunung Lumut foothills. Ulayat land or not?

### Criticisms

The regulation attracted considerable criticism. Researchers from Universitas Sumatra Utara (USU) and the NLA (Program Magister Kenotarian, 2002:70-7) pointed out that even though *adat* and *hak ulayat* are mentioned in the BAL, their legal stature is mainly theoretical in practice. The promulgation of the Ministerial Regulation is unlikely to change this, they argued, since the order of laws in Indonesia does not include Ministerial Regulations (pp. 117-118, 124-5; see also Pakpahan and Suwarno, 2005:13-4). The legal stature of regulation 5 of 1999 in this matter is questionable.<sup>21</sup>

Field research in North Sumatra led the USU team to conclude that the working definitions given in the regulation focussed on an *adat* organisation and not on *adat* communities. Testing the regulation's definitions in the field, the USU team found them to be inadequate for the local situation (p. 123; see also Saidin, 2003), which makes it likely that this problem occurs in other areas as well. The researchers found the definition of *adat* authorities to be problematic (p. 123-4) as the regulations say very little about these *adat* organisations, apart from that they must exist among those claiming *ulayat* land. Today new *adat* organizations sprout throughout Indonesia - do these qualify? Researchers from Universitas Indonesia (Tim UPD-LPEM, 2003) introduced an even more fundamental issue by arguing that the government, judging from the regulation, sees itself as the holder of all rights

in Indonesia, which it can issue or withdraw at will. Rights of *adat* communities are not recognized if they are not issued by the government and hence, the researchers wrote, the regulation only recognizes the existence of *adat* communities, not their rights.

The same UI team questioned the procedure set out in the regulation. The district government is required to judge the existence of *hak ulayat* and to carry out the implementation of the research's conclusions. This, they feel, gives the district government disproportional influence vis-à-vis other stakeholders.

The USU researchers attribute the fact that few districts acted upon the regulation to its poor promulgation. Their research shows that NLA officials at the district level were informed, but not the district government (p. 124). The USU team (p. 138-9) and Pakpahan and Suwarno (2005:20-21) reach several similar conclusions. They recommend that the regulation be revised. It needs more and better definitions, preferably based on field research data. It also needs a change of status since a Ministerial Regulation has little legal authority. A further issue is the status of the regulation as valid land law for all of Indonesia. As discussed in chapter three, forest land falls under the authority of the Ministry of Forestry rather than the NLA, thus greatly limiting the scope of the regulation.

Nonetheless, other scholars viewed the regulation more positively. As Sumardjono (1999) shows, the regulation left decision-making powers with the regional governments and local actors. This local level of decision making allowed for much more informed, diverse and practical solutions than a decision from a central government body would. *Ulayat* rights, she writes, can co-exist with other rights and laws, and be protected by formal authorities. However, she adds, *ulayat* rights will have to be decided through dialogue between *adat* communities, non-*adat* groups, local governments, Organisations, natural resource-managing organisations such as the Ministry of Forestry, and legal specialists while considering higher laws as well. Sumardjono's conclusion - that *ulayat* rights will be watered down by this multitude of stakeholders - appears likely, but shows that the validity of the right can at least be subject to negotiation.

At the same time as these critical comments, the East Kalimantan districts of Paser and Nunukan acted upon regulation 5 of 1999. The hands-on experiences of researchers, government officials and the districts' populations with the implementation of the regulation offer a reflection on, and extension of the assessment of the regulation's validity.

### 10.4 *Hak ulayat* and politics in Paser

Acting upon Ministerial Regulation 5 of 1999, the Paser district government had already set up cooperation with University Hasanuddin from Makassar (South Sulawesi) to research the existence of *hak ulayat* in 2002. In August of that year, a team consisting of both university scholars and district government personnel undertook a period of eight days of research, of which four were devoted to field-work, to establish the existence of *hak ulayat* in Paser. Data were gathered through questionnaire-based interviews conducted with 180 respondents in nineteen vil-

<sup>20</sup> As argued in note 11, formally speaking such areas do not exist. All land in Indonesia that does not fall under any of the land rights recognized in national legislation is to be regarded as state land.

<sup>21</sup> Law number 10 of 2004, which has been promulgated since, provides a hierarchy of laws in which Ministerial Regulations are assigned a place. However, the impact of this law is as yet unclear.

lages. An interview by the research team leader and Syarkawi, the district head, with one of East Kalimantan's leading newspapers shortly after the finalization of the researchers' report, gave the impression that the researchers had concluded that there were still valid *ulayat* claims in Paser, but that the government and the claimants should think of a way to accommodate the claims in the district's policies according to national law (*Kaltim Post*, 3 January 2003).

The researchers' report did, however, carry another message –the team concluded that *hak ulayat* no longer existed in Paser. This conclusion was based on the facts that numerous respondents stated that they did not adhere to a *hak ulayat* system, while others were unable to make clear to the researchers what the *hak ulayat* they claimed to have exactly was. Varying and inconsistent descriptions and definitions were given at different locations, and respondents appeared unwilling to distinguish between the *hak ulayat* which once was, and the reality of modern Paser in which land has to be shared with others (Tim Peneliti Fakultas Hukum Universitas Hasanuddin, 2002). The report was not made public during the first half of 2003, but legal specialists of the district government had been ordered to formulate a draft district regulation which stated the conclusion that *hak ulayat* no longer existed in Paser. Through the LAP's contact within the government, the contents of the regulation steadily became known outside the district office.

The regulation held that since the criteria laid down in Ministerial Regulation 5 of 1999 were not clearly and convincingly met by the results of the fieldwork, it would be wrong to speak of *hak ulayat*. This did not mean, however, that other *adat*-derived land rights did not exist either. Inheritance and usage rights based on *adat* were encountered which, the regulation suggested, can be registered individually and in accordance with Indonesian land law.

The draft regulation was presented at a meeting in December of that year, and extensively criticized by the boards and members of the LAP. After internal deliberation, the LAP's board had decided upon a course of open and direct criticism. Not only did the regulation directly undermine their base of authority, but agreeing with it would make the LAP what the PBA leader liked to call it: a tool of the government. Hence the LAP came to the meeting with over a hundred members, from which the PBA remained absent.<sup>22</sup> The LAP's board had a private meeting with the district head on the issue the following day, and proposed that the present draft be withdrawn and replaced with one in which the LAP would be given authority to review *ulayat* claims on behalf of the government. In reporting to the press, it stole the show by narrowly preventing Paser's first ever public demonstration of angry NGO members who happened to be awaiting the board's return in front of the district head's office (*Kaltim Post*, 9 December 2003).<sup>23</sup>

22 At the time, the LAP's position as the government's NGO partner had the PBA abstaining from involvement in any government undertakings. They felt that, through their absence, they emphasized their independence. The PBA uttered considerable criticism regarding the *ulayat* research and the draft regulation, but mainly in its own circles and for its own audience.

23 The people awaiting the result of the meeting were members of PeMa (see chapter five) and Pea Paser Bsu, an organisation ran by the LAP's secretary. Both organisations had close ties with the LAP, but were not part of it. This strategy is often followed by Organisations when organising protests: if any organisation is forbidden as a result, the main NGO remains unscathed.

## Critiquing the researchers

Criticism of the research focused on a number of issues. First, research had only been conducted in easily accessible parts of Paser in the wide surroundings of Tanah Grogot. Most of the work was carried out on and around the coastal plain. No researchers entered Gunung Lumut, and so no mountain communities were taken into account in the research. The second point was the rather low number of respondents. This made it doubtful that such far-reaching conclusions for the entire district could actually be sustained. Third, the point that the researchers had not differentiated between migrants and indigenous Paserese. The researchers countered that these were valid points, but that their funds and time had been limited. Hence they could not travel to remote places and had instead opted to deploy several mobile teams that visited various locations. They disagreed with the comment that the number of respondents was too low and pointed out that doing an interview properly takes time, and that is what they did. Both researchers and government believed that there was no point in differentiating between migrants and indigenous Paserese for the sake of the research. The point was to find out whether *hak ulayat* was used and recognised by the population of the district, and not by a specific group.

Nonetheless, Syarkawi was willing to listen to the suggestions presented by the LAP and, whereas he was unwilling to withdraw the draft regulation, he requested that the district parliament take full notice of the LAP's objections and suggestions (see also *Kaltim Post*, 12 December 2003). After the initial discussion with the LAP board, the LAP presented Syarkawi with a critical discussion of the draft regulation that mainly focussed on the incompatibility of the regulation with earlier district government policies, in which cooperation with *adat* representatives had been established.<sup>24</sup> An LAP delegation presented a written request to the district parliament to reject the draft regulation and verbally added that its poor legal, social and historical foundation made rejection necessary.<sup>25</sup> The delegation followed this up with a mayor newspaper interview in which they claimed never to have been involved in the research or the drafting of the regulation, and hence to have had no choice but to undertake this official protest (*Kaltim Post*, 16 December 2003).

The district parliament received another request in reaction. This request was presented by a consortium of oil palm plantation representatives and petitioned the parliamentarians not to reject the draft. Recognition of the existence of *ulayat* rights in Paser, the petitioners feared, would confront their companies with all manner of land claims that would no doubt seriously damage the district economy.<sup>26</sup> Considered against the background of the prolonged occupation of part of the plantations of PTPN Sawit Indonesia (see chapter eight), their counter-argument certainly made sense. The district parliament and the district head had to make a decision which would, either way, have negative consequences. The officials hence chose the safest way, and did nothing.

24 Notably district regulation 3/2000, which was the basis for the LAP's cooperation with the government.

25 See appendix one for the LAP's request.

26 This request was brought to my attention by two members of the district parliament and confirmed independently by an employee of one of the district's mayor oil palm companies. Although I have not seen the request myself, I have no reason not to believe these informants.



## Electoral consequences

By this time it was the fall of 2004, and district head elections were due in the second half of 2005. Syarkawi, the district head in office, feared for his popularity and preferred to postpone the issue until after the elections and the draft regulation disappeared into a desk drawer for the time being.<sup>27</sup> As it turned out, he lost the elections to Ridwan Suwidi, a veteran of East Kalimantan government who had shown himself a supporter of the “ordinary men and women” in earlier government positions. Suwidi has had considerable impact on the existing power relations in Paser politics. By inviting members of the public to visit him in person to discuss their problems and by instructing his public administration staff to mediate in land conflicts, he weakened the relevance of Paser’s *adat* Organisations, and hence their popular support. Furthermore, these measures led to a sidelining of the *hak ulayat* issue in general as the new mediation services provided by the government claimed prominence in popular land issues. Pak Suwidi’s willingness to work on the issue of *adat* land claims outside of the district court gained him considerable credit among the Paserese, and saw the settlement of various protracted disputes. The district’s large companies, which found themselves confronted with claims, favoured it less. Yet even though it appears likely that the policy stimulated Paserese in making *adat*-based land claims, the central role of the government might have avoided harsh conflicts and prolonged occupations.

The draft regulation on *hak ulayat* has not resurfaced and it seems unlikely that it will in the near future as none of the currently influential parties’ interests are served by the regulations’ ratification.

Is there *hak ulayat* in Paser? Not according to the official research, but this is disputed by the *adat* Organisations and various communities in Gunung Lumut. Although the *adat* Organisations made it appear as if they were rightful and informed representatives of these, and other, communities, the claim is doubtful. In Gunung Lumut the organizations are not known. Moreover, the rumours that circulated in 2006 regarding the district government’s plans for *hak ulayat*, a non-issue since mid-2005, show these groups to be uninformed of the politics of the day. No requests for land conflict mediation reached the government from Gunung Lumut and, more than likely, the population there has no idea that the new district head engaged in such politics. Both the district government and the mountain communities are aware of each other’s formal positions within the district, but as recently as early 2006, neither had attempted to come in closer contact with the other.

## 10.5 *Adat* and *hak ulayat* in Nunukan

In 2003, Pak Abdul Hafid Ahmad, the district head of Nunukan, decided to act upon Ministerial Regulation 5 of 1999 and have research conducted upon the existence of *hak ulayat*. Several theories exist locally as to why he decided to undertake the

research at that time. According to government sources, the research was necessary in order to gain clarity regarding the land situation in Nunukan. Pak Abdul was said to be indifferent towards the *hak ulayat* question himself, but wanted to carry out the instructions that he had been given and be done with it. It was an administrative procedure to facilitate efficient government and clarify the land situation with regard to future development planning.

Critics argued that the research was used as a camouflage to legitimise unpopular development plans that the district government had already made. These plans consisted of the development of huge oil palm estates in lowland areas that were as yet still under control of inland Dayak groups. The result of the research was to show that none of these Dayak groups had any valid *adat* claims to land and that the government was therefore free to do as it liked. The research result would then be used to deny *adat* claims concerning land already in usage by plantations as well.

A third argument may have been the strong influence of the Dayak Lundayeh in the district government. Whereas Dayak majorities exist in sub-districts throughout Kalimantan, and some West Kalimantan districts even house Dayak majorities, the main difference with Nunukan is that the Lundayeh are in influential positions. Not only are there several ethnic Lundayeh members in Nunukan’s district parliament, but Pak Abdul’s partner, vice-district head Pak Kasmir Foret, was a Lundayeh himself.



Catching eels in communal fields in Krayan

A research team was composed consisting of researchers from Hasanuddin University and district government staff, and a research period of four months was agreed upon. The research team undertook a 25-days field trip to collect data

<sup>27</sup> Personal information by staff of the district head office.

throughout Nunukan. A serious point of consideration is that, as in Paser, no distinction was made between migrants and non-migrants among the respondents. In December 2003 the research results were presented at the district parliament's office, as well as a set of recommendations. The main conclusions of the research were that:

- 1) The shape and structure of *adat* communities differ throughout Nunukan. This is caused by varieties in *adat* among the various ethnic groups of the area. In the Krayan sub-district, the *adat* of the Dayak Lundayeh is very influential. It is a legal system that is genealogical and territorial. In other sub-districts the genealogy has become unclear, as well as the genealogical-territorial aspects which have become weak because of the formation of uniform village administrations. A population group using relatively pure genealogical-territorial law is the law community of Krayan.
- 2) The *adat* law community of the Dayak Lundayeh still exists according to this research's results and has never been interrupted. This is proven by the existence in their territory of places which they accommodate into their lives and livelihoods according to religious values, *adat*, and *adat* law institutions. Their conditions of existence hence show the efficiency of an *adat* law structure in managing a population group as well as its collective land rights (Tim Peneliti Universitas Hasanuddin, 2003:161-163).

In short, the research concluded that the Dayak Lundayeh of Krayan use a clear and authoritative *adat* for managing land and other resources, whereas all other groups, despite their own claims to the contrary, no longer have such a strong *adat*. The researchers argue that groups from lowland sub-districts probably used *adat* in the past as well, but no longer do so. This is concluded from inconsistencies in the answers that the research team received to its questions. According to the research, there are *adat* leaders and *adat* arrangements among specific groups and in specific areas of the various sub-districts, these are found among minorities and are exceptions. There was no conclusive proof found for the present existence of an authoritative *adat* anywhere in Nunukan outside of Krayan. The researchers recommended that these results should be recorded in a district regulation.

### Implementing hak ulayat

The government of Nunukan followed these recommendations by issuing district regulations numbers 3 and 4 of 2004. Number 3/2004, on 'Hak Ulayat of Adat Law Communities', defines and specifies the conditions under which a community can be said to qualify as an *adat* law community and make claims to communal land. It develops along the lines of Ministerial Regulation 5 of 1999 and does not recognize or deny any *hak ulayat* in Nunukan. This is done in district regulation number 4/2004 on 'Hak ulayat of the Lundayeh *adat* law community of the district of Nunukan'. This confirms the existence of *hak ulayat* for the Dayak Lundayeh, and describes its relation to formal law. Basically, the regulation is a formal authoriza-

tion of *adat* authority as it took place at the time of research. *Hak ulayat*, *adat* and their authorities may operate independently of the district government and decide cases pertaining to land according to *adat* as long as this is not in contradiction with formal law and it is within the Lundayeh *ulayat* territory. However, no control mechanisms or sanctions are included.

The borders of the *ulayat* land are stated in the district regulation in *adat* terms; referring to the four *adat* territories distinguished by the Lundayeh. During my last visit in January 2006 a map delineating these borders to non-Lundayeh still needed to be drawn up, but it was explained to me that the territory fitted the borders of the sub-district of Krayan almost exactly. However, the recognition of Lundayeh *ulayat* rights may be grounds for a future conflict with the forestry department. Over seventy percent of the territory is either protected forest (*hutan lindung*) or national park (*taman nasional*). As such, that land falls under the authority of the forestry department and cannot be governed by NLA legislation.

District regulation 4/2004 was received with indignation among Nunukan's other Dayak groups. They felt that they too had *hak ulayat* and *adat* rights that should be recognized by the district government, and that the only reason why this did not happen was that the research team had not recognized the existence of *adat* among them. This was due to the limited research, or so they claimed, since they did not know at the time exactly what the researchers were analysing and so could not clarify their *adat* sufficiently. In addition, it was argued, no other Dayak group in Nunukan had as many educated individuals or as much government influence as the Lundayeh. Therefore they could not be expected to assist the researchers as efficiently as the Lundayeh had done. The issue continues to occupy local people and it is also encouraging other Dayak groups to claim *ulayat* rights too (see for instance *Kaltim Post* 19 December 2006).

### Hak ulayat and elections

The *hak ulayat* issue was an important matter in Nunukan's district head elections that took place in April 2006. Five pairs of candidates prepared to run in the elections. All of them formed strategic combinations that took in the main ethnic groups (Dayak and Buginese or Javanese) and religions (Islam and Christianity) of Nunukan.

The first pair consisted of the sitting district head Pak Abdul Hafid, a Muslim Buginese with Pak Kasmir Foret, a Christian Dayak Lundayeh vice-district head. The second pair was formed by the Muslim Dayak head of Pusaka, the *adat* organisation discussed in chapter six, with a Muslim migrant as vice-district head. The third pair consisted of a Christian Dayak candidate for the position of district head, with a Muslim Buginese as his partner. The fourth pair had the Muslim wife of one of East Kalimantan's provincial government most influential Golkar members, traditionally one of Indonesia's most influential parties, as the candidate district head, together with a Christian Dayak from Samarinda. The Golkar member and his wife happened to originate from Nunukan but spent most of their time in Samarinda, the seat of East Kalimantan's government, where they enlisted the Dayak candidate for the position of vice-district head. The Dayak candidate originated from

Nunukan as well but, like his election partner, was not particularly well-known there. The fifth, and final, pair was made up of a Muslim Buginese candidate district head together with a Dayak Lundayeh minister originally from Krayan.<sup>28</sup>

pairs	1		2		3		4		5	
	District head	Vice-district head	District head	Vice-district head	District head	Vice-district head	District head	Vice-district head	District head	Vice-district head
Male	X	X	X	X	X	X		X	X	X
female							X			
Muslim	X		X	X		X	X		X	
Christian		X			X			X		X
Dayak		X	X		X			X		X
Bugis	X					X			X	
Other				X			X			

Characteristics of candidates for Nunukan's 2005 district head elections.

All of the pairs held opinions regarding the recognition of *hak ulayat* in the district, and hence regarding regulations 3/2004 and 4/2004. Whereas regulation 3/2004 was considered acceptable by all, regulation 4/2004 was regarded in very differing ways. Pair one, the sitting district head and vice-district head, saw no reason to alter or revoke the regulation. Pair two, including the NGO leader, believed that neither regulation should be revoked but that similar regulations should be made for other Dayak groups as well, thus ignoring the research team's results and recommending equal rights to all Dayak indigenous to Nunukan. Pairs three and four both recommended that regulation 4/2004 be revoked and the issue be possibly restudied in the future. Pair five, however, a Buginese candidate together with a Lundayeh minister, believed that regulation 4/2004 should be revoked and that *hak ulayat* of all local Dayak groups should become an integral part of Nunukan's administration. Except for the current district head, all pairs were in favour of revisions of the Dayak Lundayeh *hak ulayat* regulation, and a revision seemed a matter of months.

Yet a number of developments took place in the run up to the elections. The candidates making up pair four fell out with each other. The Dayak vice-district head candidate was replaced with a Muslim candidate of part Dayak decent. Nunukan's Christian Dayak frowned upon this, costing the candidate district head dearly in the little support the pair had managed to gain. It also became clear that the candidate district head was more a mouthpiece for her husband than an independent individ-

ual, which made many people suspicious of the pair's ability to place the interests of Nunukan above those of provincial politics.

Pair five appeared to have trouble in gaining sufficient political support to meet the 15% required for registration by the general election committee. When the deadline for registration arrived, the result was, however, that pair five was in but that pair two, the NGO pair, had not succeeded in meeting the requirements. The ensuing elections were hence held with the other four pairs as the candidates and saw the incumbent district head and vice district head win by a considerable margin. The election results were contested and accusations of corruptions were made (cf. Asnawie, 2006), but the results were declared valid by the election committee.

The one pair not intending to reopen the discussion on *hak ulayat* and *adat* rights had hence succeeded in maintaining their positions as district head and vice-district head and, as a consequence, the regulations were not revoked or altered and no changes are scheduled to take place.

In Nunukan, the *hak ulayat* research brought about a debate on *adat* and formal authorities, but the daily situation with regard to *adat* practice actually changed very little. Before decentralisation and Ministerial Regulation 5 of 1999, *adat* authority was already prominent in Krayan while claims made in other sub-districts were not acknowledged. From a political point of view, the Dayak Lundayeh and the district government have profited from the opportunity offered by district regulation 4/2004 as it officially confirmed the existing situation. This does not mean that the situation is permanent -in four years a new round of district head elections might bring different results.

## 10.6 Direct effects of the regulations

In Paser, the non-promulgation of the regulation establishing the inexistence of *hak ulayat* did not lead to legislation explicitly recognizing or allowing for *ulayat* or other *adat* claims, but the course taken by Ridwan Suwidi heartened the *adat* movement in the district. Whereas the LAP and PBA had been maneuvered into less prominent positions by Suwidi's measures, PeMa, the local *adat* NGO of Gunung Lumut, came to life. PeMa started the cooperation project with the district Department of Forestry of erecting signs along Gunung Lumut's logging roads urging any passersby to respect the forest.<sup>29</sup> The signs all had the heading "Department of Forestry of the district of Paser in cooperation with the Union of Paserese *masyarakat adat*", implying that the *masyarakat adat* of the area are and the district forestry service are equal partners. Verbal statements of such relations are one thing, putting them in writing on public signs (even on Gunung Lumut's remote roads) is something else.

<sup>28</sup> Therefore exactly similar in make up to the first pair, consisting of the incumbent district head and vice-district head. It has been suggested that the candidate district head of pair five copied this formula as he believed it would increase his chances.

<sup>29</sup> See chapter 5.









Plans for future road construction in Krayan and Krayan Selatan. The Long Bawan –Pa'Pani road actually under construction is in the northwest corner (map provided by Nunukan District Planning Office).

## Hak ulayat and autonomy

Following the promulgation of regulation 4/2004 a long discussed plan to construct a second road into Malaysia was stepped up by the sub-district government and *adat* authorities. For the population of northern Krayan crossing the border at Ba'Kelalan involved prolonged travel even though they lived close to the border themselves. A second crossing would greatly improve their economic situation. In addition, the attitude, demands and extra taxes imposed by the population of Ba'Kelalan had caused considerable resentment among the people of Central Krayan. A second border crossing would create competition and break Ba'Kelalan's monopoly.

The road that would be needed to facilitate this would lead from Long Bawan in Central Krayan to Pa'Pani in the north, where it would link up with a local road and cross the border to the Malaysian town of Pa Sia. However, the road would lead straight through the national park's conservation zone, and the proposal caused the park management, WWF Indonesia, and a number of other environmental Organisations to lodge low-key objections with the district forestry department and the sub-district government. In Krayan, the *adat* authorities were not sympathetic. It was felt that the *hak ulayat* regulation gave them the authority to decide upon the construction of the road, especially if the sub-district government agreed to it. The *adat* leaders argued their case through Lundayeh members in the district government, and the district head agreed to the plan.

The district forestry service, with the force of the national Department of Forestry behind it, tried hard to reverse the decision but was bypassed by a curious bureaucratic construction. Acting upon the constant rumours of log theft and illegal logging along the border, the provincial forest service had opened a sub-office in Nunukan some years before. Officially the office's task was to increase the grip of the forestry department on Nunukan's forests, but critics claim that the provincial level officials established the office in order to be able to profit from the kick-backs that illegal logging provided the district level office.<sup>31</sup> The Nunukan office of the provincial forestry service overruled the district forestry service objections, and thus made the construction of a new road through a national park possible. During my last visit to Krayan in January 2006, a Malaysian building contractor was transporting materials and machinery to Long Bawan by way of the Ba'Kelalan border crossing with the intention of building the road during the dry season of summer. Involving Krayan's *adat* and its leaders in establishing and maintaining the Kayan Mentarang National Park has contributed considerably to local acceptance and support of conservation of the park. Nonetheless, respondents indicated that acceptance was more linked to the space the management plan allowed for local own usage in the area than to Krayan's population sharing a notion of the need for conservation with the project team. Having Krayan's population opt for the construction of a second international road, at the expense of the park, is not that odd when local circumstances and politics are taken into consideration. As one

<sup>31</sup> The critics referred to here were for the most part inhabitants of the upriver villagers in those areas where illegal logging took place.

respondent told me, “there is more than enough national park land that will not be impacted by the new road, and it is our land to begin with”. Local practicalities and notions of rights prevailed over the need for conservation, which is more abstract and seen as less pressing than the need for the road. The *hak ulayat* regulation thus contributed to the autonomy and development of the sub-region, but had the Lundayeh *adat* community at odds with some of the staunchest outside supporters of recognition of *adat* rights. The situation shows that Lundayeh interests are served through alliances which can be changed or terminated depending on political changes.

## 10.7 A view from the government

Is there a point in following up Ministerial Regulation 5 of 1999 from a district government perspective? The theoretical answer would be ‘yes’, as it clarifies the status of *hak ulayat* in the district. Yet this answer would immediately be refuted by anyone opposing the research’s conclusions. Many district government officials with whom I have discussed the matter fear that to act on the Ministerial Regulation will cause problems rather than simplify the situation in their district. Discussions of the Ministerial Regulation with officials of four of East Kalimantan’s districts showed their reservations to be centred more or less on five issues.<sup>32</sup>

- Research on *hak ulayat* is bound to stir up unrest among the population. When various ethnic groups inhabit a district (as is the case in all East Kalimantan districts), claims of *hak ulayat* by one group may be contested by others. In a worst-case scenario this may lead to interethnic violence such as that which took place in West and Central Kalimantan.
- Research on *hak ulayat* is bound to stir up unrest between the population and government. Ethnic groups may use the opportunity to attempt to lodge false claims that have to be disproved by the government. Members of the public could also do this involuntarily as they have no knowledge of the formal definition of *hak ulayat* set out in Ministerial Regulation 5 of 1999. Either way, it will demand considerable efforts by government employees to research and explain the situation and restore calm.
- The economy of the district is bound to suffer. When the district government decides to recognize a group’s claim of *hak ulayat*, it will lose its access and control over the land claimed by that group.<sup>33</sup> This will not only

<sup>32</sup> These comments were given in the period 2004–2006, several years after the Ministerial Regulation had been issued and after the experiences of Paser and Nunukan had become known. Hindsight is a likely influence in the views these officials express yet their reservations are enlightening as to why the following up on the Ministerial Regulation may have reached a virtual standstill in East Kalimantan and indeed in Indonesia.

<sup>33</sup> Only the most defeatist government official would consider the possibility of a district government formally recognizing an *adat* group’s autonomy over *ulayat* land (which is impossible from a legal perspective). From a practical perspective, with which district government officials are well acquainted, the possibility of a community gaining sufficient local influence to create near autonomy is not impossible.

lead to a decrease in the government’s income as less land means less economic activity, it also means that the government cannot influence the usage of the land. Hence protected forest may be logged and enterprises may find their government-ratified contracts contested or even denied by the *hak ulayat* holders, or, if the worst comes to the worst, the *hak ulayat* community may decide to attempt a split-off from the district and become a district in its own right.

- The politicians in the district government are bound to feel the consequences in the next elections. Recognition of *hak ulayat* will earn them the gratitude of the *hak ulayat* community and the resentment of those damaged by it. A denial of *hak ulayat* would see the opposite combination of parties and sentiments.
- It is uncertain whether recognition of *hak ulayat* would gain district politicians positive attention from Jakarta. Many district government officials feel that over the years both the central government and the BAL have been inclined towards annulment of *hak ulayat* and are not convinced that this stance is changed. Hence recognition might be harmful to one’s future career.

*Adat* claims to land, such as *hak ulayat*, thus offer a vivid illustration of some of the problems that decentralization implies for district administrations, and the opportunities it offers to the central level of government. The central level honours popular demand for *adat* recognition by instructing the district level to research and settle *hak ulayat* claims. Yet district officials feel that the central level uses decentralisation as a tool to foster its own popularity by pretending to solve the issue while screening itself from possible negative reactions by delegating the decision-making to the district level. In the view of my district level discussion partners, the central level realises the value of favourable public opinion. Whereas in pre-decentralisation times the district level used to have the central level to blame for unfavourable decisions, the central level now forces the district level to make such decisions in its own name.

## 10.8 Concluding remarks

The opposite results of the implementation of Ministerial Regulation 5 of 1999 in Paser and Nunukan can be seen as testimony of Indonesia’s changing attitude towards the diversity of its population –some *hak ulayat* actually gets formal recognition while other claimants do not. This development illustrates the greater autonomy at the district level of government and the increasing confidence of district officials. The willingness of these officials, usually career politicians, to prioritize local interests over what they perceive as probable central government preferences indicates the importance they attach to local popularity. One must however ask whose local interests are served with the recognition of *hak ulayat* and in what

way? It is undeniable that *adat* is strong in Krayan, but it is interesting to notice that only the *hak ulayat* of the Dayak Lundayeh is recognized while they are also the only Dayak group in Nunukan with a strong political representation. That such a link is important is shown in Paser as well. Here self-proclaimed *adat* community representatives prevented the passing of a district regulation which denied the existence of *hak ulayat* in the district, but neglected to actually introduce themselves to their alleged grassroots support. The people in Paser who might meet the criteria of *hak ulayat*, the Paserese of Gunung Lumut, had no idea of either the district regulation or the fact that they were being represented. Nonetheless the action allowed the Organisations to strengthen their cooperation with the district government. Paradoxically, the *adat* leaders of Gunung Lumut lack not only the reputation and the influence of their colleagues in Krayan, but they also lack the opportunity to gain these as there are no representatives of the formal government in Gunung Lumut who may be contradicted or fined.

### The role of law

Official law, in the form of the definitions set out in Ministerial Regulation 5 of 1999, and daily practice as takes place throughout Indonesia are not so easy to combine. Definitions, as good as they may be, are devised in the laboratory setting of a government office and are hence unlikely to encompass the broad diversity of Indonesia's *adat*. Clearly this is not the purpose of such definitions, but it has major consequences for politicians at the district level who have to pass judgments based on them. Acquiring formal recognition of *adat* rights requires more than qualifying daily practice. One needs to convince official researchers (provided these actually visit) of the authenticity and authority of *adat*, the district government needs to be persuaded to follow a favourable course, and foreign elements need to be prevented from moving in and usurping influence during the process. Recognition thus needs political support, if not political muscle. Rhetorical capacities and endurance within the surroundings of the district government apparatus are indispensable qualities. If any of these are lacking (and among politically inexperienced, *adat* abiding mountain dwellers this is more than likely), gaining formal recognition is an almost impossible task. Moreover, formal recognition in the shape of a district regulation as required in Ministerial Regulation 5 of 1999 might not suffice. As the regulation's own legal status is unclear and its authority over forest land questionable, its actual effect could be considerably less than intended.

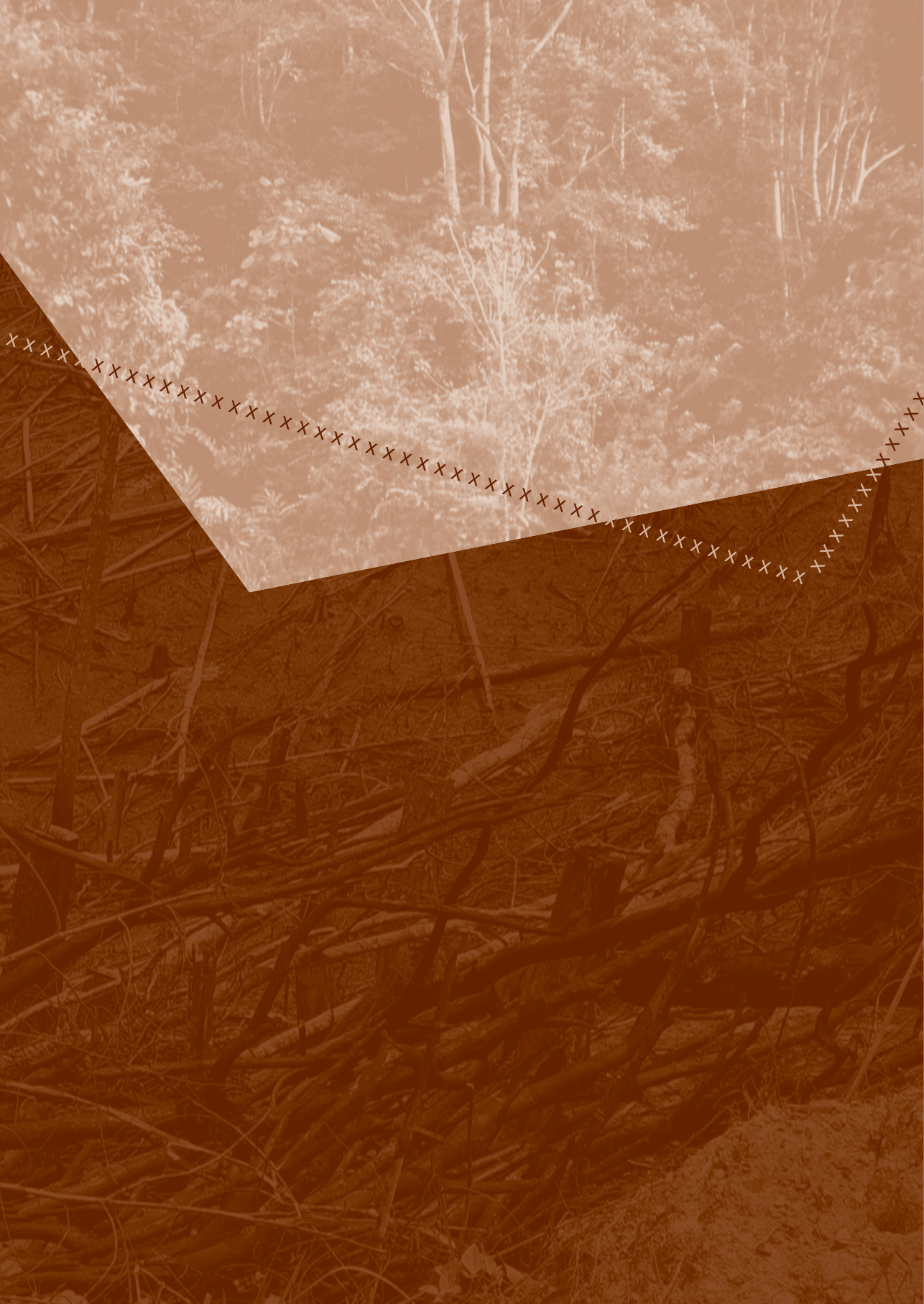
### The influence of local circumstances

There is the issue of the balance between *hak ulayat* as a national quality and as a local exception. Both in Paser and in Nunukan the research teams' findings were criticized for including migrants among their respondents. Whereas opponents considered this a fraudulent tactic, these migrants are as much inhabitants of today's Paser and Nunukan as Paserese and Dayak communities. From a national perspective their voices should be included when the current state of *hak ulayat* is

researched. They as well need land and, as stated in the BAL, all land should have a social purpose. Yet it is very understandable that this meets with sincere local protests. Can *hak ulayat* still exist in today's Indonesia? Judging from the promulgation of the Ministerial Regulation it can. Research data from Paser and Nunukan do not argue with this conclusion, but they indicate that a relatively uniform community must be found in an area relatively isolated from economic and popular development, while strong ties with the district's administration and educated representatives are an advantage. The advertised position will appeal to many communities, but how many can actually meet its requirements?

Finally, we should consider the consequences of denying *ulayat* claims. The definitions included in Ministerial Regulation 5 of 1999 suggest that a community that has *ulayat* land uses it to meet its daily needs. Yet daily needs are a broad category, it obviously includes fields and fruit trees, but how about reserves of timber and firewood? The swidden cultivation practiced in Gunung Lumut leaves stretches of land fallow for years -hardly daily usage. Yet limiting the communities' access to land would require a major change of agricultural techniques, which is far from an easy complication to resolve.





# Concluding Remarks 11

Law, land and the discourse of rights

The front cover of this book offers striking illustrations to the stuff that has been said in the book. It shows us the wideness of the Gunung Lumut Mountains in Paser. No neat plots of land, proper fences or straight hedges that mark the boundaries between territories. An unpaved, exploring dirt road starts in the foreground, but its route downhill and into the forest cannot be discerned. As one who went down this road (it leads to a good bathing spot) I know that it is windy, sometimes hard to make out, and that it has numerous forks. In a metaphorical sense the road and the landscape through which it runs are not unlike the place of land law in East Kalimantan society. Official law is present, but is not solidly anchored in local society. It lays out an experimental and exploratory path that is strongly constructed in some areas, but is overgrown with local custom in others. The path branches where diverse official authorities maintain different positions and there is no telling whether other, parallel-running yet unofficial paths are not preferred by the population. The official path does not reach throughout society and does not have access to the more remote areas. Like the dirt road in the photograph the path of official law needs to be kept clear by human effort. Asphaltting might work wonders for the actual road, but government presently sees no need for such costly improvements in remote areas. Its stance is similar where the metaphorical road of promulgation and enforcement of official law is concerned. Cutting back encroaching vegetation and occasional emergency repairs will keep the road visible and passable, albeit only for those travelling on foot, by motorbike or four wheel-drive car. What goes on at the road side is of minor concern, as long as some manifestation of official presence in the wilderness of society is perceptible. This book is dealing mainly with the road sides; the contact zones between official and unofficial normativity. I looked at unofficial authorities encroaching on the road surface of official law and at official road side trimming, but also took into account the pioneering work of building a road through such rugged terrain and the vulnerable nature of unasphalted road surfaces.

The second photograph on the front cover shows another concern of this research. It shows the national independence monument in Balikpapan; two Indonesian soldiers erecting the national flag in Iwo Jima-esque style, their backs covered by an indigenous Dayak warrior encouraging them and protecting them with his *mandau* and shield. Yet the apparent unity of the image does show some cracks. The soldiers look to the ground, establishing *Indonesian* sovereignty. The warrior looks beyond them, as if this action is not part of his affairs. He supports the action taking part in front of him, but discerns actual authority from the abstract symbolism of a flag. The soldiers' guns are on their backs, harnessing their aggressiveness by the need to establish the sovereignty of the nation. The Dayak warrior takes no part in this physical action. He is ready for a fight over the land. Immediately, if need be. Fighting against the colonialists he could become a na-



tional hero, as we saw in chapter 1, but what would a fight specifically for Dayak land rights make him?<sup>1</sup>

Obviously, metaphors and symbols are not what a concluding chapter should be made of. Yet these brief considerations may serve to illustrate that three of the themes that came to the fore in the preceding chapters –legitimacy, land and unity– can be interpreted and fielded in various ways. The three make up the elements of a triangle that sits at the base of all discourses of rights –by which I mean, following Foucault, a system of rules regulating power-flows in order to promote specific, contested, interests– encountered throughout this research. None overrules the other two, yet all three are essential discursive elements of a consistent and potentially successful argument. It is the usage made of these elements, in various ways and by various actors, which make up the discourse.

### 11.1 Focussing the findings

In the preceding chapters of this book I discussed the state of authority with regard to access to land in two East Kalimantan districts, Paser and Nunukan, following the end of New Order rule and the first years of *reformasi*. I have tried to bring across the complexities, dynamism and the ongoing competition inherent to the subject in order to illustrate the diverse nature of relations between people aspiring to rights to land and the importance of their arguments. Rights to land are not a sterile, anonymous set of rules; they are envisioned and experienced as interwoven with tradition, precedence and –most of all– identity. After over three decades of centralized New Order rule, in which these sentiments were subordinated to the national interest as defined by government, these discourses of rights came to the fore as rallying points in regional politics. These discourses were launched from within regional societies. New or upcoming leaders and politicians referred to sentiments among population groups claiming rights to local lands as yet not recognised by the government. New Order politics did not ascribe special legal status to such lands or groups, *reformasi* reshuffled the Indonesian administration, its authorities and its responsibilities considerably.

For many people who did not hold a place in the patrimonial pyramid of New Order authority, a unique occasion to try and further their own positions and interests had thus arrived. At the level of regional politics, control over land proved to fill a key position in this process. For those without access or recognised rights to land, the opportunities to try and obtain these had never been so good. For the first time on over three decades, the structure of power was up for revision. This situation linked land to authority in two crucial ways. First, the authority to control access to land and further the interests of those without it provided an excellent

point of departure for government officials aspiring to popularity as well as power. Second, individuals capable of focussing the prominent authority of *adat* upon their person could thus obtain sizeable support of adherents to *adat* land rights and bring this prominence to bear with the regional government. Land and power thus are intricately linked, but this book is not about this essentially well-known fact. What I wanted to come to grips with when I undertook this research was the daily reality of access to land; its management by government and other authorities and the experiences and sentiments of the population. The area I am interested in is what lies between land and power. I wanted to understand the role of official law as promulgated by the government and that law's status and efficiency as judged by the population. Moreover, I wanted to identify popular opposition and such alternatives as people reverted to. It was this meeting of forces over access to land, of control and its refutation, of social demands and the radius of state authority, that I am interested in.

In chapter 1, I asked a number of questions to guide the research and make sense of the powers and flows of authority that govern access. These were 1) *has decentralisation influenced the normative dimensions of access to land in the regions of East Kalimantan?* If so, and I feel that the preceding chapters have indicated that it has, what has happened?

The next question, 2) *which normative systems are applied?* Indicates the potential for multiple normative systems, rather than a single, national one, operating independently or complementary to one another in the same field. A clear-cut division between 'official law' and 'non-state normative systems' is an artificial partition. In actual operation the practicing of authority is a fuzzy process in which (un)official law is closely intertwined with identity, local tradition and similar (un)official norms.

This leads to 3) *who applies normative systems, why and how?* The position of the authorities empowered and entrusted with applying the rules of the systems are filled by specific individuals. What brings them in these positions, and how, and to what extent, are they able to shape and influence the norms? What is more, however, how do the people and circumstances that are governed by these normative systems influence these systems' operations and rules?

The last question hence was 4) *what influences do social, economic and political circumstances have on the implementation and observation of land tenure, and which factors explain their role?*

Contestations between official law and custom are not unique to Indonesia, but are an issue of relevance to many nations throughout the world. What this research aims to contribute is an explicit focus on the dialogue between these systems on the substantiation of claims to land. Anthropology of law has long used the conceptual tool of legal pluralism to deal with this phenomenon, but globalisation and interconnectivity in general have given rise to a situation that goes beyond the co-existence of various normative orders. Conscious choices are made from available legal forums and claims are embedded in a main order, but normative orders are competing and looking at the neighbours. *Adat* authorities incorporate official law characteristics while state authorities flirt with *adat*, having the two orders engage

<sup>1</sup> An official definition of 'hero' is given in Presidential Decision no 33 of 1964: "A hero must be (a) citizen of the Republic of Indonesia who dies in the course of a genuine struggle in the defense of nation and state; (b) a citizen of the Republic of Indonesia who has given service in defense of nation and state who, in the course of his life, has nothing to dishonor his earlier struggle."

in meetings that have a strong political and temporal undercurrent. The legitimacy and width of *adat* and official law are unfixed, fluent qualities. Yet whereas a village community can often correct unwelcome policies and decisions of its local authorities, it is at the higher level of the region or even the province that *adat* becomes a wildcard in dealing with the government. There are no standard conditions under which references to *adat* guarantee political success, mainly because results are highly context-related. Contacts, politics and power relations shape land tenure management. Law –official or customary- is the framework within which this takes place.

The research questions posed in chapter 1 and repeated above thus share a common framework of underlying issues. How do law, custom and authority interrelate to one another? What do they mean for the discourse of rights, and what do events in *reformasi* East Kalimantan contribute to our understanding of the functioning of these concepts? These are not questions that could be answered using a limited focus. Even the remotest village sits on a map, somewhere in a government office, and that map states the legal status of the village's land. The village is part of the greater society around it, even if contacts are only sporadic, and takes part in the exchanges of ideas, news and discourse. Information travels. It makes that the remotest village in Paser promulgates village regulations to appropriate the forests of its *adat* territory utilising official authority. It also makes that indigenous organisations lobbying the provincial government for recognition of *adat* rights refer urgently to local Dayak land claims as well as adding the weight of hinting at non-local Dayak violence. Land matters in our remote village are thus far from a village affair. They are part of a large and wide-ranging network of authorities, discourses and alliances. Our remote village is connected to institutes of international law as well as to the head of government of the region. If anything, a conclusion of this research has to be that disposing of and mobilisation of such connectivities is a major requirement for successfully arguing local land rights in 21<sup>st</sup> century East Kalimantan.

## 11.2 Finding the rules

Concrete enforcement of abstract authority is bestowed on representatives in the name of a specific normative power, be it the state (cf. Kurtz, 2001:177-178) or *adat* (Henley and Davidson, 2007). In either instance, these representatives sustain their actions through invoking an abstract and theoretical authority that does not have acting powers by itself. This means that a number of properties can be considered essential to a broad understanding and acceptance of the workings of these powers. Clear and reasonable rules, equality of the parties, an independent judiciary, a monopoly on the application of violence and an emphasis on the existence and power of the authority for the benefit of all of its subjects –strictly speaking all conditions fitting with the rule of law concept- are important in this respect. In many such cases as discussed in this book, however, the situation is made more complex by the absence of a leading authority recognised by all. For the rural com-

munities studied in this research, the state is an authority that is largely beyond their reach. The opposite is, however, not the case. A large and potentially ferocious entity, the state can reach everywhere throughout the nation. The state can be benevolent, but it can likewise cause the destruction of villages, farms and livelihoods, as caused by New Order era resettlement, logging and plantation enterprises. The state is given shape regionally by its representatives, officials implementing 'Jakarta's' orders. Although they are not the state as such, these officials are the nearest that many among the regional populations will get to the power of the state. The state, however, is no longer a fully top-down operating entity. Regional heads and parliaments are elected directly by the local population, as are the national president and parliament. Officials are being brought down from the pedestals of inviolability where New Order governance had put them, and made to account for decisions and policies. Critical voices increasingly depict the state and its representatives as answerable to the population. They are not there to solely instil the government's needs in the population, they are two-way intermediaries. Official rules, it is felt, should reflect an awareness of this task.

*Adat* authorities represent an abstract power that is as immaterial as the state, but *adat* and its officials are local and more limited in their powers. The state is stronger, but the state is remote and its attention for local needs uncertain. The local representatives of the state, remote from Jakarta, may be susceptible to the authority of *adat* because of this distance. In order to continue existing, authority regularly needs to display the presence of its power. Yet power travels badly. In the districts discussed in this book, *adat* authorities –from the highest to the lowest- are a permanent presence, whereas the authority of the state is there by representation only. The president, ministers or the provincial governor- are all locally absent. When it comes to the personification of power, the state is in arrears. Local *adat* authorities derive full autonomy from their source of power, yet regional government is tied by the limits that official law and higher government pose. Regional authorities are popularly judged by their merits in local affairs, so should local government be pro-active? And enter the area of operations of Lund's (2006:673) twilight institutions? The local popularity of a district head like Ridwan Suwidi of Paser or a sub-district head like Serfianus in Krayan indicates that their energetic activities in this area are much appreciated. Yet can such activities along the borders of law be maintained in an era when Indonesia is demanding just, transparent and lawful behaviour from its government?

## The politics of law

Law fulfils a complex normative position. Based on the data presented in the preceding chapters, I discern four essential properties of law in daily usage. First, its origins and contents are often unclear to the population. Are they dealing with a regional law or with national legislation? What are the consequences and how does the law relate to other legislation? The complex relations of the Basic Agrarian Law, the Forestry Law and the numerous lesser laws and regulations that pertain to land in one way or another are unknown to a majority of the population who do, however, have such laws quoted at them as sustaining rights of others. To the inhabit-

ants of Gunung Lumut, discussed in chapter 5, for instance, but also to those living in Paser's or Nunukan's capitals, official law is an unclear and therefore uncertain source of rights. As a consequence, these people make no attempts to engage with this legislation or its procedures and instead attempt to avoid it. For these groups law's inaccessibility makes that law is not seen as a communal, national property but as the normativity of the regime or, more concretely, as that of 'Jakarta'.

Second, the limited local presence and abstract identity of the state make that a concrete application of law is often associated with the specific individuals in local government responsible for such implementation. General acceptance of the legal validity of such a decision is therefore subjected to that official's reputation. Consider such cases as were discussed in chapters 8, 9 and 10. In chapter 8 Paser's district head of the time had to deal with the immediate effects of *reformasi* on land tenure, being land occupations and demands for the return of *adat* land. Uncertain of the direction *reformasi* would take, he chose an inactive stance and claimed all relevant decisions had to be taken in Jakarta. Although largely correct from an official perspective, this was the wrong answer for his local audience. Never mind the law! The district head was expected to show his colours; was he with Jakarta or with the population? He made his choice, but chose wrongly. Chapter 9 saw a respectable civil servant, Pak Tur, claiming a heritage of sultan's land by referring to official law. Although he followed official procedures his relatively covert mode of proceeding, clumsy social manoeuvring as well as his image as a pre-*reformasi*, established bureaucrat combined to mobilise grand-scale popular opposition. A similar claim in the neighbouring district of Kutai Kartanegara had been carefully managed by the popular district head, and was generally considered as in line with *reformasi* throughout that district. Chapter 10 saw a decision by Paser's district government regarding the existence of valid *hak ulayat* disputed by an extensive and vocal part of the population, many of whom maintained that the data on which the decision was based were simply wrong. It did not help the government's cause that the events discussed in chapter 8 had given the district head a poor popular reputation for dealing with land affairs.

Third, because of this lack of legal knowledge and of trust in its fair implementation, people shy away from official law and attempt to meet their normative needs through other or additional authorities. In both Paser and Nunukan the validity and relevance of *adat* is maintained in no small part by the disinclination of people to revert to law. Many individuals will not, for instance, have their land registered by an NLA official unknown to them, according to unintelligible procedures. They will rather value a written statement by their village's head or an oral confirmation by the local *adat* leader that the land is theirs. In areas like Gunung Lumut and Krayan, discussed in chapters 5 and 6, people know that the legal status of an NLA certificate surpasses that of *adat*, but they feel that the moral base and actual power of local alternatives is at least as strong.

Fourth, there is the 'mystery aspect' of law; its potential to legitimise unexpected and beneficial changes. Since *reformasi*, activists have been spreading rudimentary knowledge of official land law throughout the province. As a result it is widely understood that national law limits the powers of local government officials in their dealings with *adat* communities, but also that *adat* rights have a place in national

land law. The legal ground for the recognition of *adat* land claims is there, it is felt, but real changes have to be brought about at the abstract levels of government above the regional authorities. Whereas rural villagers consider themselves unable to achieve this, sophisticated urban activists are another matter. Non-government forces have gained a voice in deciding the influence of law, and have considerable popular support. Chapters 7, 8, 9 and 10 concern the rising influence of NGOs and especially *adat* organisations with regard to access to land. As local government is not the sole authority to interpret the meaning of official law, law's implementation has opened up to alternative forces in society. This has laid the foundation for a popular perception of law as a beneficial resource.

As a consequence of these four properties, regional governments do take possible negative consequences of decisions for (part of) the population in account. Thorough planning, socialisation and promulgation are essential if consequential reputation damage is to be avoided. The *hak ulayat* regional regulation of Paser and the *masyarakat adat* regional regulation of Nunukan, both discussed in chapter 10, may serve as examples. In both cases, unclearness of procedure and ignorance in large groups of the population regarding the existence of the regulations until just before (in Paser) or after (in Nunukan) their promulgation, led to much public protesting. Official law must be upheld as well as implemented by the relevant government authorities, but procedural clarity and transparency of decisions are very important for popular support.

### The potential of *adat*

*Adat*, as a source of rights to land, refers to a wide-ranging discourse that varies from community-level normativity to regional and provincial politics. Its prominent position may well be linked to the effects of *reformasi*, but not in its entirety. Usage of *adat* is varied and informed by rather diverse goals. Three main usages came to the fore in the preceding chapters; as a type of normativity, a source of authority, and as a forum for conflict settlement within the (inter)national legal context. First, *adat* is referred to as a local normative system regulating access to land in the 'out-of-the-way' communities of Kalimantan's mountains, as is discussed in chapters 5 and 6. Existing at the fringes of lowland society and the reach of the government, these communities adhere to *adat* in regulating land access among themselves and neighbouring groups. In this context the meaning of *adat* is that of a practical tradition; a custom that has evolved over years of usage into normative practice. In this sense *adat* refers to the management of land to which a community claims a right based on tradition, but also to the norms enforcing this right by sanctioning transgressions. These norms are dynamic and evolve with time. They cannot be fixed without losing their validity. Official law has presented itself on *adat* land and has little space for it. It is through negotiation, insistence and a grasp of the advantages of the own position (remoteness, economic profit, cooperation) that the communities manage to obtain a continuation of their *adat* claims on conditions that is maximised according to the circumstances.

In a second type of discourse, *adat* is mobilised in an activist and political form that strongly connects to the land issue but moves beyond it as well. In the more

accessible parts of East Kalimantan the meaning of *adat* as a source of rights to land has extra relevance due to the presence of non-indigenous migrant populations and mining and plantation companies using extensive tracks of land. *Reformasi* provided indigenous groups with the opportunity to reclaim lands, or demand indemnifications, based on *adat*. The Dayak *adat* organisations discussed in chapter 7 and featuring extensively in the land issues discussed in chapters 8 and 9 operate beyond the immediate field of land tenure. They attempt to apply *adat* as a means to attain political influence and authority in society at large. In the case of one organisation, the DADK, its leader went to considerable lengths to secure audiences with two consecutive Indonesian presidents, thus expanding the clout of the DADK back home. In this discourse *adat*'s symbolism – be it costumes, rituals or language – is mobilized to emphasize its authenticity as well as its autonomy. Government has no say over the composition of *adat* councils, nor does it have knowledge of *adat* rules. *Adat* is politicalized as a source of indigenous rights that expands the normative meaning of the concept beyond a claim to land, and brings a demand to the nation to take indigenous interests in East Kalimantan at heart, or risk the consequences.

A third category that is relatively inconspicuous in comparison to the strong presence of the Dayak movements, also takes *adat* as a translation of the concept of indigenous rights, but seeks for recognition through the possibilities of national and international law. At present activists following this approach are not as visible in society as the other two, but their approach is certainly interesting. By establishing contacts with international indigenous rights groups and steeping themselves into the international material on indigenous and human rights, this group could create a legal awareness in Indonesia's *adat* communities comparable to those in indigenous communities worldwide.

*Adat*, as the equivalent of custom, aspires to a continuation of traditional land usage among some of the province's more remote communities, to material indemnification and increased political influence by more militant organisations, and to recognition of *adat* as the equivalent of indigenous rights in international law by other activists. Such mobilisation of *adat* can be seen as a reaction to the 'imagined community' of Indonesia; the unitarian community and culture which the central government emphasized over local diversity. The emphasis on *adat* uses an opposite emphasis by referring to the local over the national. The imagined community is thus, keeping Axel's (2003) comments in mind, subject to self-transgression. *Adat* is no alternative to the Indonesian imagined community as it lacks uniting elements beyond a defined group. Yet it does provide for a critical re-examination of 'the state' and impacts elements of the state's structure and directionality. As *adat* suggests alterations to the existing framework of the state, its allure as a source of authority makes it a substantial threat to the continuation of the rule of New Order-era elites. *Adat* alternatives provide a counterweight, and by the look of things they are going to hang on.

### Who has authority?

The above indicates that when it comes to disposing of the authority to decide over matters of land access, individuals are most strongly placed when various authorities sustain their position. The capacity to take binding decisions is not defined by the official legitimization of one's position, but by the power to enforce decisions. Such power exists by social agreement, and hence is a fluid capacity. Kurtz's (2001:22) matter-of-fact definition of power as "the ability of A to bend B to his or her will" reflects the position of strong and authoritarian rule of a government without opposition, such as the New Order regime was. When the discourse legitimizing such rule is not opposed, it can continue unabated, even when the regime changes. The New Order's figureheads may have been removed, but whether the patrimonialist usage of authority common under its rule is actually removed, is another issue.

In the regions, power is embodied by strong individuals; government officials, leaders of *adat* movements or *adat* leaders, who obtain authority in local affairs through compelling discourse. Discourse, then, following Leigh Brown's (200:31) Foucauldian perception, functions as a system of rules to regulate the flow of power in a battle waged over power. This poses two major questions. What rules can be discerned when it comes to obtaining support, and what are the implications for the validity of the norms of official law and *adat*? The answer to the first question is that the rules went from static and exclusive – the domain of a select few – to dynamic and open to contestation. As various powers compete over social influence, each is bent on creating truth, as Foucault would have it; on controlling and influencing the discourse that will bring support. There are (dis)advantageous conditions; a strong association with the New Order or a reputation for elitism or corruption can work against an individual, while ethnic, religious or other emphasis can gain the support of significant groups. Yet discourse is dynamic, reputations can be remedied and new truth can be created. The rise to prominence of middle management government officials as *adat* authorities, as is the case with the LAP, the PBA and similar organisations, is a strong illustration. In the regions, there is no unified elite able to control the rule-giving. As a consequence there is no major power to set the rules either. In many of the cases discussed in the preceding chapters issues are settled through a collaboration of power brokers, mostly from government and *adat* backgrounds. Circumstances in *reformasi* East Kalimantan require no less.

A major conclusion of this research therefore is that as a result of the process of *reformasi* there is not a single absolute authority governing land affairs at the regional level. There is no fixed determination of rules, no standard balance of powers. Each setting and occasion has its own specific division of power. Neither official law nor *adat* provide an absolute value in the application of land law. The question posed above as to whether local government should become active among the twilight institutions should be answered positively. In order to maintain credibility as authorities devoted to general interests rather than those of a (Jakarta) elite alone, regional officials can do worse than engage in these debates. For some, like Ridwan Suwidi or Serfianus, this recommendation is superfluous since they already started. Decisions are negotiated in this arena, not imposed in old top-down style. This situation of negotiation can be seen as a major increase



of democracy at the regional level –as some feel the onset of non-government authority to be- or as a lack of strong central authority. The next paragraph will focus on that.

### 11.3 Determining authority

Claiming land is one thing, getting the claim recognized is something else. In many cases authority over land is not in the hands of a single functionary or the exclusive prerogative of a single normative system. This makes obtainment of land rights a diverse and potentially uncertain undertaking. In East Kalimantan, both official law and customary rights suffer from poor reputations with specific groups of society. The official Indonesian legal system is burdened by a popular association with New Order era land disposessions seen as unfair, corrupt and unjust. *Adat* claims, on the other hand, attract official comments of wantonness, illegality, and fraudulence. Appeals purely to the one or the other normative system are likely to attract criticism or objections based on the other from opponents, making the muster of social support and embedding of a claim a tactically essential move. Conflict over land, as came to the fore in the preceding chapters, is an arena where the two frequently meet. This paragraph deals with the relationship between these various authorities, and seeks to explain the problem its fluidity poses to attempts at official regulation. It does not suffice to point out that the respective roles of the various normative systems are highly dependent on the circumstances of each meeting. Their functioning is influenced by location, in terms of organisation by the administrative level at which it takes place and by the complexity of the conflict.

#### Land management in rural areas

As becomes clear from the perspectives on official law found in Gunung Lumut (see chapter 5), Paser's coastal plain (chapters 8 and 9) and Krayan (chapter 6), official land law has a poor reputation among East Kalimantan's rural population. Its rules are not known or poorly understood and its application is considered as unfair and unpractical for the local situation. Land management in rural areas is largely carried out by village heads and *adat* leaders and unlikely to involve outsiders. First-hand experience of official land law often concerns negative experiences such as limitations of land rights, for instance when the NLA issues land permits to companies or transmigrants without taking local *adat* land claims into account. As a result land matters are rarely taken beyond the village and NLA officials are generally considered as uninformed, corrupt, and as looking down upon rural farmers.

*Adat* leaders, on the other hand, are personally known to most of the community and are susceptible to criticism of the *adat* community. They have to be: if they are not, the village head will surpass them as an authority to settle disputes. Being present in the community gives both the *adat* leader and the village head a major advantage over higher government authorities such as NLA and district court officials. *Adat* leaders and village heads can be as corrupt and dishonest in their decisions, but are likely to find it harder to maintain their position if such behaviour

will lose them the support of the community. Village heads usually have received a rudimentary training in official land law for managing day-to-day affairs, but practice often balances out favouring *adat*. It is unlikely to encounter anyone with real expertise of official land law in a village. Most people who have studied land law start careers as government officials, working and living in urban centres.

Many East Kalimantan village communities find themselves in situations where they are relatively shielded from the eyes of the government and official control on local land management is largely absent. It is only when major new developments such as the opening of a mine or logging concession, the development of a new transmigration site or the construction of a road have place that the two types of authority over land engage intensively. At all other times the rural areas largely exist as plots of state or forest land on maps kept in offices, making actual and bureaucratic realities are two different worlds.

Yet as came to the fore especially in chapter 5, authorities and individuals at the village level make conscious of such elements of official law as may improve their local circumstances. In villages like Rantau Layung or Kepala Telake the outlook on official law appears to be developing from a government tool for limiting villagers' land rights to a means that can actually improve village life. Law in the village, therefore, is law in transition. It moves from operating almost autonomously from the authority of official law to a situation in which local normativity is combined with the best that, locals feel, official law has to offer.

#### Land law in an urbanised setting

It goes too far to speak of actual urban circumstances in either Paser or Nunukan, but the capitals of both districts and the surrounding villages certainly qualify as semi-urban areas. An extensive middle class of government officials, traders and other professionals resides in both areas while the percentage of immigrants is considerably higher than in the hinterland villages, thus reducing the influence of *adat* leaders.

The role of state authorities in land issues, notably the NLA and district court judges, is larger in these urban settings than it is in rural areas, although still limited. For the same reasons of corruption and uncertainty given by many rural villagers, people in the urban areas prefer to settle issues through neighbourhood heads rather than make use of the official channels. The NLA and the court are mainly involved when parties lack community support but can refer to government approbation to counter competing claims.<sup>2</sup> Official authorities and *adat* leaders operate at some distance of each other, leaving a middle ground where those with the capacities to accost both these authorities can take up a connecting position. Here *adat* organisations have come to the fore that use their central position to capitalise on connections with government to obtain community support, and refer to these supporters in pressing their case with the government. For these organisations, land law is subservient to what they present as being *adat* interests, the

<sup>2</sup> For instance Pak Tur's usage of the court discussed in chapter 9, and Alosius Kaku's taking out of a land certificate discussed in chapter 6.

defence of which is linked to political purposes. A permanent and stubborn championing of *adat* will do little to set up working relations with the regional authorities though, whereas dialogue and negotiation expose common interests. However, as *adat* ingratiates itself to government, the opposite has place as well. Ridwan Suwidi, Paser's district head, carried out a beautiful attempt at undercutting *adat* organisations' community support by fielding his own government mediators in a similar role (see chapter 8). These mediators operated between official land law and social interests, explaining and using the former with a permanent view to including the latter. As with the *adat* organisations, involving government mediators would bring a review and most likely an indemnification of some kind. In this way the mediators differed dramatically from officials in the NLA or the district courts who did not have this space of operation.

Urban areas are as much an arena for competition over authority regarding land as the villages are. In these urban settings the usage of law is in transition as well, but here politics are a larger factor than in the rural areas. The urban politicalization of *adat* by regional power brokers is a strong example of the usage of *reformasi* circumstances to appropriate authority beyond official law.

### Plural authorities?

Authority in East Kalimantan can be characterized as dynamic and competitive. Essentially three different systems vie for prominence. The prominent normativity of *adat* and of the official law of the state as well as the patrimonial structures institutionalised during the New Order. The first two and the third are quite dissimilar. Patrimonial relations transcend the normative characteristics of law and *adat* alike and provide a normative framework all of its own. *Reformasi* demanded the termination of such structures, but how to end a system that has provided the normative standard for elite business, politics and local regulations for such a long time? Its existence and its unofficial yet directive role in society are well known throughout the regions. Ending the impact and normative influence of this system is essential from a rule of law perspective, but would be a blow to those vying for power.

The relation between the two normative systems of official law and *adat* is a major issue throughout this book, and one that has been engaging scholars since Van Vollenhoven's days. The earlier essentialist debate on the legal nature of *adat*, which I discussed in chapter 2, addressed the question extensively, yet seems to me to overlook one of *adat*'s major qualities. As a normative system, *adat* regulates daily affairs in small-scale societies. *Adat* is inherently political in nature, and does not aspire to the strict neutrality that Kleinfeld (2006) and Böckenförde (1991:29-50) demand of law. As the cases discussed in chapters 5 and 6 illustrate, the point of *adat* as a normative system is consensus and its rules are directive, not absolute.

Conflicts over land in East Kalimantan concern obtaining the support of as many relevant authorities as is possible. Following *reformasi*, however, the grounds and definitions of authority have become considerably unstable. Status and competences of regional government have been considerably altered while central control was simultaneously decreased. *Adat* authorities, a largely powerless group

when it came to confrontations with government during the New Order, rose to prominence as regional autonomy begun. This provided multiple forums to address, but also problematised the status of 'authority'. Obtaining overall authority goes beyond absorbing rival authorities –consider the cooperation between the LAP and Paser's government- or entering their field of activity (such as the *tatapraja* negotiators fielded in Paser to stem the influence of *adat* organisations).

If we take up Bailey's theory, a situation in which plural authorities exist problematises the function of the umpire. Not only does the plural 'umpires' become more appropriate, umpires need to be engaged in settling as many conflicts as possible in order to maintain their status as authority vis-à-vis rivals. Forum shopping and stacked law hence can become major strategies in winning a conflict. The more authorities one can field, the more power is on one's side, the better one's chances are.

### A crisis of authority?

The workings of *adat*, as well as of *adat* organisation-government constellations like the LAP or Pusaka, or NGO-inspired government operations like Paser's public administration division, differ considerably from the ideal situation of rule of law. From a legal positivist perspective, this observation leads to the implication that the legal effects of these constellations must be inferior to official law. Reality, however, brings me to doubt such a premature conclusion.

The supposed superiority of official law in Indonesia is compromised by New Order era events, when official law's authority was applied to further the interests of the elite at the expense of the rights of others. This practice deeply affected popular views of official law, causing a distrust of official law's objectivity and the fairness of those tasked with its application. Whereas *adat* authorities are not considered infallible either, at least *adat* decisions are informed by local contexts and engaged individuals can be part of the decision making process. If law is elitist, as Diamond ((1974:257-258) suggests, and majority interest is sidetracked, then why is this acceptable for one system but not for the other? The answer probably lies in the differing reputation and credit of the two systems. Znoj's (2007) concept of 'deep corruption' helps to appreciate the profundity of practices regarded as immoral by a large part of society in the application of official law. Considered from the perspective of ordinary villagers -people with little money and no political clout, the official legal system seems to hold little promise of justice. Local *adat* is not perfect either, but it is a known system and one that allows parties a voice in the proceedings. Largely beyond or at odds with the legal consciousness of those people who are tilling the land, official law and its representatives have a crisis of trust to get abreast of.

## 11.4 The legal dimension

The role of official law in determining access to land is a complicated one. In chapter 3, I discussed Indonesian land law at length and found that its main problem

was internal competition. Land law is not the domain of one single legal entity but fragmented between various government agencies, ministries and levels of the administration. Land is covered by an extensive and highly varied number of laws, implementation of which is problematic. As the exact official authorities of the diverse institutions are relatively unclear, competition is rife. As a consequence, the legal certainty that such legislation provides is limited and the actual validity depends on the power that an institution can bring to bear. This means, for instance, that the large and rich Ministry of Forestry is in a strong position to overrule or ignore such legislation as promulgated by its main official rival, the more marginal National Land Agency.

Whereas such unclear authorities and hierarchic relations are essentially issues to be solved within the administration, their existence is advantageous to some. Official land law shares much of the pliability that patrimonialism required of the government. If a rule works against the interest of those in power, that rule can be overruled by another institution, replaced by a new rule or simply ignored. Such practices have long damaged the efficiency of land law, making it inconsistent and its practice subject to politics and local power constellations. The regions want their part of the authority of official land law, and work at appropriating what the centre will not yield. However, it is revealing with regard to the state of official land law that in the majority of cases discussed in this book no reference is made to official laws whatsoever. References to *adat*, effectively not recognised by the Forestry Law, mainly have legal meaning in reference to the BAL, which is a poor legal base considering the powerful position of the Ministry of Forestry.

### The role of *adat*

In the preceding paragraph I referred to *adat* as a source of authority, as a type of normativity and as a process of conflict settlement. *Adat* is also referred to as a right in relation to official law, a fourth usage that has, perhaps, far-reaching potential. As discussed in chapter 3, the BAL and several other laws pertaining to land refer to *adat* as a type of right to land –most notably the Ministerial Regulation on *hak ulayat*– whereas other relevant laws –specifically the important forestry legislation– do not recognise such rights. *Adat* thus comes to the fore as a poor legal ground to evoke with regard to land rights. Yet a second usage of *adat* as a source of rights, through equation of *adat* communities (*masyarakat adat*) to the international concept of ‘indigenous peoples’ who may be entitled to specific rights, poses a more complex issue.

Indonesia’s Human Rights Law<sup>3</sup> and Constitution<sup>4</sup> decree that recognition of traditional rights of *adat* communities is possible in so far as these rights can still be said to be alive and not out of balance with the modern Indonesian state. Although such conditions can be a ground for denying *adat*-based large landownership, applying them to deny a poor, rural community access to small plots needed for their daily sustenance, would likely go against the Human Rights Law. Yet *adat* land

claims in East Kalimantan rarely concern small plots of land, but rather relate to extensive areas or concern financial indemnification for past dispossession. These circumstances pose a problem to remote farming communities such as the people of Mului (see chapters 1 and 5), who lack the sophistication –or the muscle– to bring their *adat* land claims under the attention of the government. Due to the regular *adat* land claims aimed at indemnification that are made in the coastal area, theirs and similar cases are likewise associated with political and financial gain, and treated accordingly. For such communities, the national Human Rights Commission would be a forum to address, but as its judgements are advisory rather than binding the effects of invoking this authority are limited.

The multiple usages of *adat* in claims against non-*adat* opponents are giving the concept a distinctly political and even militant meaning that is remote from the actual usage of the concept when it comes to actual need for land. This is problematic, as in many instances rural communities make claims to ensure their daily sustenance rather than political or financial gain. The quest for recognition of *adat* rights could thus bypass its most essential goal from a human rights perspective, ensuring the rights to land of poor population groups.

### Recognizing *adat* rights?

The domain of international law adds an extra dimension to the *adat* debate. As *masyarakat adat* has been equaled to indigenous communities, the Indonesian state finds itself confronted with a further need to define *adat* and, moreover, to explain (or defend) its course of action in terms of international law. Up until the present the Indonesian government emphasized two essential points in word and action (see chapters 1 and 3). First, Indonesia’s endorsement of the protection of specific rights of such groups and second, the point of view that Indonesia’s population is almost completely indigenous and that specific protective laws are therefore unnecessary. The matter of the definition of *masyarakat adat* thus may have far reaching consequences. If, as its supporters maintain, the concept equals indigenous peoples as defined in international law, Indonesia may be obliged to treat these group accordingly. The matter remains unresolved but two major obstacles can be discerned. First, the limited legal means that international treaties provide the proponents of *adat* to demand commitment from the Indonesian government, and second, the internal definitional problem. In Indonesian national law the validity of *adat* rights to land is usually delineated by the stipulations that the *adat* in question has to be ‘valid’ –adhered to in daily life– and not collide with other land rights conferred under national land law. These stipulations are problematic factors as they neither stipulate conditions nor designate an umpire. Nonetheless international law may be of assistance to the proponents of *adat* in establishing whether Indonesia has committed itself to recognizing special rights for indigenous peoples. If such a commitment is found to exist the exact legal circumstances permitting the validity of *adat* would become less relevant if the synonymy between *masyarakat adat* and indigenous peoples is abandoned and replaced by international definitions. Indigenous peoples may be *masyarakat adat* as well, but from a legal perspective this should not be a relevant issue.

3 Law 39 of 1999, article 6.

4 The amended Constitution of 2000, article 18b.

## 11.5 Resources and interests

A variety of authorities is available to parties desiring to argue a land claim. There is the government with its official representatives, agencies and official monopoly on violence, as well as social organisations, respected *adat* leaders or *adat* organisations which combine the authority of *adat* with the power of numbers. Best chances are achieved when multiple authorities lend their support. The same strategy holds true for authorities seeking supporters.

Amalgamating sources of power is reminiscent of government attempts at establishing a national Indonesian identity, as well as of lower-level government appropriation of the symbolism of local *adat* and culture. As discussed in chapter 1.

### Authority appropriation and the cogency of association

Appropriation of symbols suggests an authority that incorporates government as well as societal sources. The coat of arms of the PBA, for instance, as visible on Bachrudin's beret in the picture at page 262, is pentagonal in shape. Originally it was a square badge, but a fifth corner was added to symbolise the PBA's adherence to the five principles of the national state philosophy of *Pancasila*. Likewise, the winged symbol on Bachrudin's chest is based on Indonesia's *Garuda*, while the badge on his left upper arm is a close copy of the district blazon of Paser. The uniformed appearance of members of the PBA is inspired by the looks of official police or the military, thus associating its members with state authority. Such affiliation with the state is of major importance in furthering the legitimisation of most of the *adat* organisations discussed. The membership oath taken by members of Pusaka (see chapter 7) identifies the oath takers first as citizens of Indonesia subordinate to national law, and only then as Krayanese concerned with the defence of the interests of *adat*. Likewise, the Dayak *Adat* Defence Command and the DADK take care to uphold an image of *adat* adherence in their otherwise militaristic appearance (see the picture at page 277). In a less martial and symbolic manner, the *adat* law books and procedures of Krayan follow much the same course of suggesting government approval through associating with official methods. Written down *adat* neatly organised in articles and rubricated after the best examples of reference books on national law is a strong means of convincing legal researchers that what they are looking at does indeed have the characteristics of a legal system.

For the government, the case is more complicated. Omitting references to local identity in the era of regional autonomy is not an option, but emphasis has to be chosen with care. In Paser, changing the district motto to one in Paserese underlines Paserese ethnicity without stressing its importance over that of the sizeable migrant population. A less-sensitive course of action lies in stressing the importance of local affairs in general. Paser's district head Ridwan Suwidi emphasizes social unity in Paser by opening his office to each and every member of the population, without favouring one group over the other.

For both government and non-government authorities the point is to incorporate the others' authority without losing one's own independence to a similar association. The LAP in Paser took a gamble by entering into a formal agreement of

cooperation with the district government. Although their influence increased, their credibility as an independent *adat* organisation suffered from such a close association of which one may even wonder whether it paid off. Rather than bringing about a position in the district government for the LAP head, the new district head recognised the LAP's tendency to independent behaviour and expertly tied the organisation – and its competitor the PBA – to his government in a relatively unimportant capacity (see chapter 8). The district head thus ensnared these *adat* organisations, but escaped entrapment by bonds on their conditions.

Appropriating association is not without its dangers. An *adat* organisation leaning too far towards the government exposes itself to criticism regarding the honesty of its intentions and by consequence the authenticity of its claim to *adat* authority proper. Government officials getting too friendly with local organisations run the risk of accusations of corruption or maintenance of patrimonialist structures. The dialogue between indigenous authorities and the state is a sensitive affair. Examples of land claims in Australia and the United States similar to those in East Kalimantan have been discussed in chapter two. Striking in all cases is the need for authenticity on both sides: government and indigenous group need to publicly ascertain their disposal of powers and rights exclusive to them. Likewise, they need to demonstrate a desire to cooperate with the other party. Both are part of the same nation, and public opinion warrants a thorough consideration of the case in the light of this unity. How far can the borders of unity be stretched? Where lay the limits of toleration? The examples from Australia and the United States included in chapter 2 show the local nature of such discourse. In the United States emphasis on American identity was a major part of the claimants' arguments; in Australia the legal protection bestowed on Aboriginal spiritual sides and widespread social support for Aboriginal claims were politically sensitive elements. In both cases claimants engaged with the state on the terms of the government, but not without introducing additional elements of their own that gained authority through social opinion and support.

In other instances, for instance the New Zealand treaty of Waitangi and the cases of Tibet and Tuvalu, matters are argued along possible lines of official law with the argument of indigeneity adding weight. What these international cases show is that as in any conflict, the chance of success has to be optimised by fielding appropriate and comprehensive arguments that are backed by strong authority. In East Kalimantan, the quality of arguments is uncertain as no general umpire or widely acknowledged criteria exist. Appealing to the prestige of other authorities by appropriating their symbolism broadens a parties' normative base, but also facilitates alliances and suggests that these authorities' sources of power are taken seriously by the appropriator. Authority in affairs concerning the combination of land and indigeneity thus is a fluent and mouldable commodity that can be sensitive to political and social influences. As identity – indigenous or national – is an infeasible part of the claim, neither party can claim absolute authority and far-reaching arguments can be fielded in the discourse to convince the umpire.



Fielding discourse

The bases of authority that substantiate discourses of access to land are created through tactics of approach, association or maintaining distance. As Foucault (1979:100) suggested, the usage of elements to create the discourse that leads to what is the ‘truth’ of how things are, is not regulated in any way. Annexing the elements, ensuring support and fielding these in dealing with opponents are a tactically sound way, although the course of the process can take unexpected changes. Pak Tur’s land claim (see chapter 9) was initially successful as he had carefully prepared his ground among potential opponents and ensured their –sometimes tacit- support. Things went awry for Tur when the PBA seized the opportunity to not only defend the interests of those using the land, but to further their own social prominence as an *adat* organisation as well. A resounding victory is one in which the opposition is crushed and all prominent parties support the victor. That is what the PBA was after, and they succeeded fairly well. In a similar vein, the success of the Lundayeh in arguing the validity of *hak ulayat* in Krayan (see chapter 10) and lobbying for its recognition is likewise linked to a combination of the ‘truth’ about *adat* land and powerful support. It is not certain whether Lundayeh *hak ulayat* would have been recognised without the influence of Lundayeh officials in the district government. As such, its recognition may well be dependent on the makeup and program of the next district government. Recognition is done through a district regulation; retraction of such recognition is a fairly simple district level procedure as well.

This balancing of powers in order to achieve a goal becomes clearer when considered using the two sets of categories of Bailey’s analytical formula. Consider these cases from preceding chapters:

case	Adat forest in Rantau Layung (chapter 5)
Protagonist	Rantau Layung’s adat head
Opponent	Rantau Layung’s village head
Umpire	Village population, NGOs, regional government and police
Goals	Immediate goal: getting the village head to respect adat authority over Rantau Layung’s forest. Long-term goal: subduing other authority in the village to that of adat.
Resources	Authority instilled by adat, respect and support of part of the population, support of nature conservation organisations opposing the logging practices of the village head. At a later stage, the probable embezzlement of funds working against the village head.
Constraints	Part of the village openly preferring the authority of the village head, the outside character of NGO assistance.
Strategy	Breaking the stalemate by having police and government officials catch the village head red-handed, then using the election of a new village head to subjugate village head authority to adat.

The conflict between Rantau Layung’s village head and the community’s *adat* leaders was extensively about logging in *adat* forest, and hence about access to *adat* land. Behind it, however, was a political rivalry for the position of highest local authority between these two officials. The village head had removed himself and part of the community beyond the authority of the *adat* leader through the effective argument of economic profit; logs mean money. He could do this, of course, by selling the illegally logged wood to buyers outside of Rantau Layung. He had outside support without which he could not have conducted his business. The *adat* leader likewise needed to line up outside support in order to be able to eventually overcome the village head’s ignoring of his authority.

Likewise, consider the role of land in the political arena of Paser after Ridwan Suwidi became district head. Three major players had a role in mediating large-scale land conflicts; the PBA, LAP and the district government (see chapter 8).

case	Mediation of land conflicts
Protagonist	PBA and LAP, two adat organisations
Opponent	Regional government of Paser
Umpire	Paserese society
Goals	Immediate goal: settling land conflicts between members of the Paserese population and others, often plantation companies. Strategic goal: securing the position of mediator in such land conflicts, and the public authority that it holds.
Resources	Adat-derived authority and active support of membership. Strong reputation among the Paserese population, initial suspicious attitude of large groups of the population towards the district government not withstanding Ridwan Suwidi’s immediate popularity.
Constraints	Inter-adat organisation rivalry, connections to the district government.
Strategy	Instigating actions through affiliated organisations, moving from a mediating position to a role as advisor to the claiming party, enlisting the support of the regional government’s chief mediator.

All cases discussed in this book are about more than access to land per se. In each case a conflict over land rights is presented as the cause of the action, but each conflict also allows for authorities to legitimate a public show-off, or even a showdown, of their powers in other matters. In this way authority in land matters works as a stepping stone to more and more diverse power in society at large. The discourse of land access clearly is not just about land. It is a means to political and social influence applied by new authorities to establish themselves.

11.6 Who owns the land?

This book has a deceptively simple title: “Who Owns the Land?” Throughout its chapters I have attempted to show that the answer to this question is not a black-

and-white affair. The results of the task suggested by the subtitle “Looking for Law and Power in East Kalimantan”, made clear that there are plenty of rules referring to land rights, but that these rules by themselves do not suffice. Rights are formulated according to a variety of normative systems among which claimants chose as suits their needs. Individual systems often are incomplete or internally inconsistent, and the applications of rules pertaining to land is frequently mixed up with interests as by the political agenda of those involved.

Yet have the rules governing access to land become clearer? This research’s findings indicate that people are finding out, mainly by trial and error, how various normative systems are best mobilised to maximise the chance of success. Many land issues are decided in what could be called ‘middle zone normativity’. Official authorities as well as non-state authorities are frequently involved in settling a case. These authorities are called upon because of their general reputation, social position and demonstrated power. Their interests are much broader than land issues alone, making the settlement of land conflicts part of larger regional politics. These changes are the major and most impacting results for land tenure in East Kalimantan that can be ascribed to *reformasi* and administrative decentralisation.

Land tenure is a prominent and highly dynamic field in *reformasi*-era East Kalimantan. Discourses of land rights are diverse, well-informed, and borrow from such diverse sources as official law, local ethnic power blocks, *adat*, Indonesian history and such other arguments as may be of use. As in Jakartan power-struggles, the identity of those supporting the discourse and the identity of those to which it is addressed are matters dictating discourse formulation. Land rights may generally be considered as a legal field *pur sang*; their implementation is at least as much a political issue.

Does this mean that I must conclude that land law in East Kalimantan is in a sorry state? From a strictly legal formalistic view I evidently ought to, but such a rigid conclusion would not do justice to the possibilities and changes that *reformasi* and administrative decentralisation brought. Without a doubt the certainty of land rights leaves much to be desired and procedure, authorities and rules may vary with each case, but public exposure and authorities’ accountability to society have increased. The merest *adat* leader and the regional head of government both need the trust and backing of society. This is not what rule of law means, nor does it imply a strong base for democratic government. It does however indicate that the strong grip of a single, fixed elite on Indonesia’s affairs and riches has decreased. Without local support, land use projects are going to be difficult to carry out.

Who, then, owns the land? This question does not qualify for a simple answer. Much depends on the alignment of discourse and authorities to convincingly argue one’s case. The land is governed by rules stemming from various authorities, but the rules and the representatives applying them are part of a political dynamism that comprises much more than land alone. Moreover, this dynamism is subjected to changing influences brought about by evolving circumstances in society at large. The rules that govern land tenure today are different from those 50 years ago, and the rules in force in 50 years from now will most likely have changed with the times.

## Land as property

Final authority over land lies with those who have ownership, and that right entails more defining characters than a legal contract alone. Whether the Orang Paser are named after their land or the other way around is not certain, but the people of Mului state that their ancestors took the name of the Mului River once they settled along its banks. When identity is brought to bear in the discussion over land rights criteria become vague and subjective, but it is a major factor in land conflict worldwide. In Indonesia, the meaning of identity related to land has become a factor that unites the various communities of Gunung Lumut with the Paserese from the coastal plain; a factor that unites Dayak groups throughout Borneo and even –some activists maintain– unites the indigenous population throughout the nation. Clearly there is a point here where the interests defended move beyond immediate needs into the realm of power blocks. Strength of numbers, the imagined community of the indigenous groups of the nation –or the world– might sustain rights of *masyarakat adat* communities in Borneo’s interior as well as in Africa or South America. Yet can a community claiming indigenous land rights be at odds with a government maintaining national rights over land? Of course it can, but when both refer to a patriotic love for the nation and an intense connection to that land, something has to give and public opinion, eloquence and powerful connections are important tools in determining what this is going to be. “You can take the people from the land, but you cannot take the land from inside the people” is how an *adat* activist in East Kalimantan phrased this relation. The *adat* leader of Rantau Layung in Paser (see chapter 5) put it even more arresting: “we do not own the land, the land owns us”.<sup>5</sup> A gripping sentence for its strength and simplicity, but also for the legal perspective it implies. The sentence affirms that Rantau Layung’s population does not own the land as such, thus leaving room for the state, but also makes the community an inalienable part of that land. This is the discourse variety of protesters chaining themselves to fences and although official law can no doubt provide the literal equivalent of a pair of chain cutters, it is a tough officer that is willing to put them to use.

Notwithstanding protests, physical or discursive, it seems unlikely to me that land disputes in Indonesia will easily turn into violent conflicts again. At the regional level, power brokers –government and non-government alike– know one another and are well-aware of local interests. Shared interests exist, and the authorities that have been devolved to the regional level of government go a long way in allowing government officials to amend differences. Decentralisation can be considered as a major cause for many of the changes and developments discussed in this book, but it also provided the means to avoid escalation. So far, it seems to be doing the job.

## The future of land tenure in East Kalimantan

Although I maintain that the present state of land tenure in East Kalimantan’s

<sup>5</sup> Bukan kami punya tanah, tanah punya kami. A phrase which I have heard and seen on other occasions and in order places in Indonesia since. It is hence not impossible that this *adat* head did not think of it himself.

districts is one in which popular influence and control has increased, the dynamic nature and political affiliations of land tenure arrangements do little to secure the neutral and stable position that rule of law desires in a legal system. At the heart of this problem sits the normative pluralism that governs land tenure. Official law and *adat* maintain an uneasy alliance. Official law has never fully replaced *adat* as a normative system in East Kalimantan society and contains impulses to recognition of *adat*, even if these are weak, in the Basic Agrarian Law and other legislation. As the official validity of *adat* land claims is vehemently argued by people maintaining such claims, a possible solution would lie in clear land laws that leave no rooms for vague or even opposing interpretation. Yet whether *adat* and state authority ought to be combined in official laws and, if so, is a highly problematic issue. As part of the *reformasi* measures intended to democratise and reform Indonesia's legislation, several attempts have been undertaken to revise the Basic Agrarian Law (see chapter 3). As yet none of the versions that have been drafted so far has been accepted, and it is far from clear whether the various stakeholders – both within society and in the various governmental departments – will ever agree on a version to be passed.

Yet how much of an alternative is the continuation of the present situation? In out-of-the-way places with little government presence, such as the Gunung Lumut Mountains, *adat* maintains its function in regulating land access. Decisions are taken in unison by the members of the community and people try to find a pragmatic solution that is acceptable to all rather than refer to rules in a rigid fashion. Conflicts are avoided if at all possible and although some have more influence than others, prominent members must ensure support in order to maintain their position. Control over land tenure in the *reformasi*-era regions of East Kalimantan is not unlike this situation. New authorities can come to the fore relatively unhindered by (a lack of) official status, rules are negotiable and solutions are sought that lie between the positions of the various authorities involved. Conflict between parties is avoided by seeking a compromise acceptable to all.

The rules applied in managing the land are not purely those of official law, nor do they completely follow local *adat*. They are the result of local grassroots level negotiations between diverse actors and authorities. In Paser and in Nunukan, government officials thus display a willingness to compromise that would have been highly unlikely during the New Order. Even if this situation does not produce a certainty of legal principles for the population, it does provide a level of influence in government policies that is generally considered to be an improvement. Indonesia's main systems of normativity as encountered in East Kalimantan have thus engaged in debate and negotiation. The result is a dynamic plural situation, yet one that many among the population feel comfortable with.

The photograph on the back cover of this book shows a Dayak *hudoq* dancer just before performing at the foundation ceremony of the Dayak *Adat* Command in Balikpapan, in 2006. The dancer has left his identity as a fierce creature bent on chasing away evil spirits by raising his mask. His face is visibly and he looks the beholder in the eye in a satisfied, even happy way. He has not removed the mask though, and can easily lower it to return to his state of wild fierceness. The dancer's

situation is not unlike the outlook that many of my informants among the population expressed; they are willing to engage with official law and open up their *adat* to accommodate official rules. They are looking for a dialogue rather than display protests against the invisible yet omnipresent spirit of the national state, although that possibility remains. Good and just official law is seen as desirable by virtually all of my respondents, many considering it to be part of the *pembangunan* (development) of the nation and of their own situation. *Hudoq* dancers wear elaborate costumes manufactured out of banana leaves. The dancer in the photograph does not; his costume is made from strips of green-coloured plastic. He considers this an improvement. Plastic is stronger and more durable, improving the costume without changing its essential qualities. The relation between *adat* and official law that respondents desire is likewise. *Adat* can be adapted if necessary, provided its central tenets remain unaltered. A paramount *adat* leader from Krayan formulated this sentiment thus: "If official law continues to operate like *adat* and *adat* takes the strong points of official law, we should be heading for a future of good cooperation".



# Appendix I

## Excerpts from the adat law book of Krayan Darat

### General principles

- 1) The principle of fining according to *adat* is valid for everyone who commits an offense in the *adat* territory of Krayan Darat.
- 2) Every person living in the *adat* territory of Krayan Darat must submit to *adat* law.
- 3) Every action can be fined based on the *adat* law in force.
- 4) If an action has place that can not be found within *adat* law, the *adat* judge will decide the conflict based on principles that are legal according to *adat* law.
- 5) Legal principles as mentioned in article four of this book will be established by legal witnesses.
- 6) Fines under *adat* law are:
  - a) Main fines consist of buffalo, pigs, jugs.
  - b) Additional fines take the form of additions to the main fine.
  - c) A conditional fine is a fine which is imposed but only carried out after involvement in another case has had place.
- 7) The main fine is the fine prescribed for an action or offence.
- 8) An additional fine is a removal of rights to objects, animals or land that are the subject of the conflict.
- 9) Implementations of article seven and eight in this book are only valid based on a decision by a legal *adat* judge.
- 10) An act can be said to be concluded if the fine is paid in accordance with the *adat* law, after reconciliation has been established by the *adat* council.
- 11) A conflict can be brought before a higher *adat* authority if the decision of the lower authority is not implemented, as proven by an explanatory letter from the village *adat* head where the conflict was heard.
- 12) No fine will be imposed for an action subject to fines if the person who is to pay is not in good health.
- 13) Regarding a person who is not in good health as described in article 12, many people need to know of this and evidence must be given by witnesses.
- 14) An act committed by an underage child can be diminished through consideration of the *adat* council.
- 15) A person who was forced to commit an act subject to a fine can be given a diminished fine.



### Rights of the *adat* council

- 16) The *adat* council is qualified to judge every case brought before the *adat* head and decide it according to *adat* law.
- 17) The *adat* council is qualified to conduct research on the conflicting parties.
- 18) The *adat* council is qualified to determine the suitability of witnesses in an *adat* conflict.
- 19) The *adat* council is qualified to end activities taking place involving the subject of the conflict.
- 20) The *adat* council is qualified to confiscate goods, land, animals and other materials considered to have ties to the essence of the conflict.
- 21) The *adat* council is qualified to request a letter of transference of authority from the lowest or nearest *adat* head to try the conflict for a party involved in the conflict.

### Rules of procedure of the *adat* session

- 22)
  - 1. All participants of the *adat* session must respect the *adat* session's chair.
  - 2. The session commences when the conflicting parties have arrived.
  - 3. Someone desiring to speak must first put up his hand and obtain permission from the chair of the session.
  - 4. Someone who is speaking may not be interrupted by other parties.
  - 5. A speaker may not offend, or utter words that are not appropriate to other parties or the session's chair.
  - 6. As long as the *adat* session is taking place participants may not leave.
- 23) Before the session starts participants must have read the rules of procedure of the *adat* session.
- 24) Transgressions of article 22 shall be processed in accordance with the rules of the *adat* law.

### Evidence

- 25) Someone stating to possess a right or disputing some right of another person regarding an issue is obliged to prove the existence of the right to that issue.
- 26) Evidence in accordance with article 25 can be: written evidence, evidence delivered by witnesses, evidence based on assumption, evidence based on an oath.
- 27) Written evidence is considered legally binding if known and recognized by both parties and the witnesses to the session.
- 28) Evidence supported by witnesses will win in all types of conflicts.

- 29) A statement of a witness unsupported by other evidence is considered as not legally binding by the *adat* session.
- 30) Someone prepared to give testimony must be asked to state his willingness to speak truthfully, transgressions of this article will be dealt with according to the article on deceit.
- 31) Every witness must impart his reasons for knowing the issues he clarifies.
- 32) Every person who has family relations with one of the parties in the conflict is exempted from acting as a witness.
- 33) Evidence based on assumptions or conclusions regarding a certain issue must be subjected to the judgement of the *adat* council.
- 34) Each confession that is made during the *adat* session is considered legal evidence.
- 35) Confessions made during the *adat* session are considered fraudulent if inconsistencies in the confession are proven, based on the judgment of the *adat* council. These will be fined according to the article on deceit in this book.
- 36) An oath of a witness can be admitted if the person in question brings uncertainty in witness statements.
- 37) An oath that one or both parties are ordered to take as closing of a conflict can be admitted if no other means capable of proving the claim or defense can be admitted.
- 38) An oath to end the conflict can only be admitted or ordered from someone who has admitted to committing the act that is the subject of the conflict.
- 39) A person who is ordered to take an oath and refuses or someone who revokes an ordered oath, must after refusal or revoking be considered or pronounced guilty in the claim or defense.

### *Adat* finances

- 40) The finances of the *adat* council of the area of Krayan Darat consist of:
  - 1. The fee for registering a case.
  - 2. Ten percent impounded of the total of all fees.
  - 3. Other means of finance considered legal.
- 41) Payment of consumptions during the session is the responsibility of the plaintiff.

### Destruction of property (*pengerusakan*)

- 112) If a person deliberately causes to disappear or to remove demarcations of land borders or removes crops with the intention of violating another person's rights he will be fined two jars of the crocodile type and a pig of six *kilan*, while the initial situation must be restored.

- 113) A person who deliberately destroys a land border demarcation, a house pillar or other objects with the intention of violating another person's rights will be fined one buffalo and a pig of six *kilan* for reconciliation.
- 114) If a person deliberately damages or destroys to the extent of becoming unusable public facilities such as forest hamlets, bridges, irrigation works or clear water sources he will be fined one jar of the crocodile type and must restore the damages.
- 115) If a person through neglect causes the burning of houses, fields, or other property of other persons he will be fined at least one plain jar, after which individual cases will follow.

### Demolition (*pembongkar*)

- 117) If a person deliberately and forcibly demolishes a house or a fence separating rice fields with the intention of violating another person's rights he will be fined two jars of the dragon type and a pig of five *kilan* and a return or restoration of the demolition.

### Robbery (*perampasan*)

- 121) A person stealing goods, livestock or land not his property will be fined one plain jar and must return the stolen goods to the legal owner. A pig of six *kilan* is required for reconciliation.

### Embezzlement (*penggelapan*)

- 124) Someone who deliberately maintains private ownership of goods, livestock, land or crops which he knows not to be property under his control will, whether the act is committed through wickedness or not, be fined a jar of the crocodile type. The goods, livestock, land or crops must be returned to the legal owner.

### Production land (*tanah garapan*)

- 142) Communal production land may not be rendered into private property, unless regulated in a written statement by the village *adat* council and made known to the paramount *adat* leader of Krayan Darat.
- 143) Communal *ulayat* land which is recognised as used by ancestors is

- managed in accordance to the needs of the *adat* community.
- 144) Communal *ulayat* land and *ulayat* forest form a unity that cannot be separated from the life of the *adat* community.
- 145) Land that has been used by ancestors can become private property and can be inherited.
- 146) Land of which ownership cannot be proven remains communal production land.
- 147) Accepted proof of ownership of a plot of land can for private ownership, clan or group ownership be: 1) the presence of ancestral graves 2) large and extensive plantations laid out by the claimants 3) credible witnesses.
- 148) Land that has been used and then abandoned for a long period of time still remains the property of the person who first used it.
- 149) If a person commences to use land which already is the property of another person, the first person must pay an indemnification to the second one.
- 150) Cutting wood on communal production land in order to build a house is allowed until the house is finished. A maximum of three trees may be marked for this.
- 151) Regarding trees that have been marked: anyone wanting to use these needs to request permission from the marker.
- 152) Transgression upon article 151 brings a fine in the form of a compulsory indemnification to the marker the exact shape of which will be defined by the village *adat* head.
- 153) A person marking wood needs to do so clearly and make sure that people can understand the mark.
- 154) A person who knows the owner of a plot of land but plants on the land as if it were his own must return that land to the legal owner, who must pay an indemnification for the planting carried out by the first party.
- 155) A plot of land of which no owner is known to the user can become the property of the aforementioned user with the knowledge of the village *adat* council. Objections that cannot be proven cannot be considered.
- 156) Land which is the property of other people cannot be sold. If the sale is already under way the sale must be stopped.
- 157) Land which is used by others with the knowledge of the owner cannot be retaken by the owner without informing the user. If such land is retaken the owner has to pay the user an indemnification.
- 158) With regard to each conflict must be established that while it is processed by the village *adat* council or the paramount *adat* leader no activities are carried out with involving the subject of the case.
- 159) Elucidation to article 158: this will be fined with one pig of five *kilan*, this loss will not be repaid.
- 160) Regarding the elucidation to article 158: the plaintiff is next allowed to answer if it is the plaintiff who is fined a pig of five *kilan* (to be determined by the *adat* council).
- 161) The assessment of the borders of each plot of land must be witnessed by the village *adat* council and other witnesses.
- 162) Each person who uses land belonging to another without informing the

owner will be fined a pig of five *kilan*. The activities must be stopped and damages must be restored or indemnified.

- 163) The exploitation of stones or sand on land that is the property of other people for private usage must be permitted by the owner. For purposes of public interest the *adat* council can request permission from the owner.
- 164) Water which rises on the border of two privately owned fields becomes the property of both field owners.
- 165) Any other person or legal body wanting to undertake activities on land that is *adat* property must request permission under *adat* law.

### Inheritance (*Harta warisan*)

- 166) According to the *adat* of Krayan Darat inheritable goods may be movable and immovable goods.
- 167) The division of inherited goods is determined by the oldest child.
- 168) Elucidation to article 167: the child that looked after the parent(s) must receive a larger share.
- 169) The system of dividing the inheritance is ultimately up to the wisdom and decisions of the parents, not up to the requests of the children.
- 170) Transgressions regarding inheritance by one of the children in relation to the inheritance of the others will be fined one pig of five *kilan* and the inheritance must be returned to the legal owner.
- 171) All inheritable goods that are the property of the clan cannot be managed by another clan or person without the foreknowledge of members of the clan.

### Theft (*Pencurian*)

- 173) Anyone who deliberately takes goods, livestock, harvested crops or land that is the property of another person will be fined one jar of the crocodile variety and the goods, livestock, or land must be returned while the crop must be reimbursed.
- 174) For theft of livestock, goods, harvested crops or land which have since changed hands the perpetrator will be fined:
  - a) If a buffalo was stolen article 173 is to be applied with a pig of five *kilan* added. To reimburse for a long period of time a pig of six *kilan* can be added.
  - b) For goods other than a buffalo article 173 is applied with a plain jar added.

### Property (*hak milik*)

- 180) According to the *adat* of Krayan Darat what is meant by property is a right

that a person can obtain to goods, land, livestock and other through legal inheritance and sale.

- 181) The ownership rights of the owner entitle him to enjoy everything forthcoming from the goods, land, livestock or other objects.
- 182) Ownership of a plot of land entitles the owner all that is underneath and on top of the land, unless the owner has granted permissions to other people.
- 184) Each transfer of ownership must be validated by written documentation signed by at least three witnesses.
- 185) Ownership of land that before was not owned by anybody belongs to the person who first takes possession or management of the land.

### Agreements of sale (*perjanjian jual beli*)

- 190) Sale is an agreement which induces an obligation in one party and a right to as well as over something, in another party.
- 191) Each agreement must be validated in writing, except when both parties cannot write in which case they must inform the *adat* council or witnesses for each party.
- 192) A sale carried out underhandedly is considered invalid by *adat* law.
- 193) If a sale has place of an objects that the buyer has not yet seen and the object is found to have disappeared or be destroyed, the seller must return the price of the aforementioned object according to agreement. If a part of it is still there the buyer calculates his loss which must be paid by the seller.
- 194) When a meeting has had place on the contents of the agreement and the sale will have place, the rights to the goods, livestock, land or other that is the subject of the sale only fall to the buyer when the goods are handed over.

### Borrowing (*pinjaman*)

- 199) An agreement to borrow must be validated according to article 191.
- 200) A person who does not return borrowed goods as concurred with in the agreement is automatically subjected to such measures as set out in the agreement
- 202) The value of each security provided must be higher than that of the borrowed good.
- 203) A person who does not redeem his debt in accordance with the agreement is automatically subjected to the validity of article 202 meaning that the security becomes the property of the security's receiver.
- 204) If an object is borrowed out in order for it to be used, the lender remains the owner of what is borrowed.

## Renting (*sewa-menyewa*)

- 224) Each renting agreement must be validated in writing unless parties decide otherwise and inform the *adat* council.
- 225) Renting is an agreement which provides a right to an object to another party to enjoy goods, livestock, or land for as long as the determined period that the receiver has agreed to pay for.
- 226)
  - 1) Someone renting movable or immovable goods is obliged to hand over full rights to the lessee.
  - 2) Article 226 must be carried out using protective or suitable circumstances such as are found to be required and may include improvements to the object to be rented before it is handed over.
- 227) A lessee is obliged to guard the rented object and return it in accordance with its original condition.
- 228) Damages to the goods incurred while in the hands of the lessee are the responsibility of the lessee.
- 234) In renting a plot of farm land it is compulsory to maintain notes of what is sown and harvested while the object is under the authority of the lessee.
- 235) The notes mentioned in article 234 are required to know the rights and obligations of the owner of the rented object.

## Definitions

- 256) An *adat* community (*masyarakat adat*) is the total of a group of people who interact because they share the same *adat*, area and customs, and each of these people originates from Krayan Darat.<sup>1</sup>
- 257) An *adat* territory is an area which is considered by an *adat* community as their ancestral *adat* property.
- 258) *Adat* law is a custom which is maintained by *adat* prominents according to ancestral ways regarding all types of pursuits that occur in the community and carry sanctions.
- 259) The *adat* council (*lembaga adat*) is a forum of the *adat* community of Krayan Darat for discussing and solving problems within the *adat* community.
- 260) The members of the *adat* council are ordinary people and *adat* prominents elected by the *adat* community as members of the *adat* community forum of Krayan Darat.
- 261) The *adat* chair (*ketua adat*) is someone elected by the *adat* community in an *adat* meeting. The position of *adat* chair cannot be inherited within the same family or clan.

<sup>1</sup> *Masyarakat adat adalah sejumlah kelompok orang yang saling berinteraksi karena milik adat, wilayah dan kebiasaan yang sama, dan setiap orang asal usulnya Krayan Darat.*

- 262) The *adat* council of Krayan Darat is the official and highest forum for solving every issue according to the *adat* of Krayan Darat.
- 263) In carrying out its function the *adat* council has the following structure:
  - a) The paramount *adat* council of Krayan Darat consists of:
    - 1) The *adat* chair
    - 2) The *adat* secretary
    - 3) The *adat* treasurer
    - 4) *Adat* members consisting of representatives of every location within the territory.
  - b) The *adat* council at each location consists of the equivalent of point a 1, 2, 3.
  - 5) *Adat* members for the location consisting of representatives of each village.

The term of office of an *adat* chair is determined in an *adat* meeting of the community.

The last two articles of the books are of great importance to both the book's and *adat* validity. They inform us that:

- 265) Every deed burdened with a fine by *adat* law which is not encountered in this *adat* law book is still valid, its validity being based on the *adat* judgment of the *adat* council of Krayan Darat.
- 266) *Adat* law decisions of the area of Krayan Darat are valid as soon as they are laid down.



# Appendix II

Exerpts from the adat  
law book of Krayan Hilir

## Chapter XIV on borrowing (*pinjaman*)

### Article Three

#### *Securities on borrowing goods, livestock, land*

- a) If someone borrows goods, livestock or land he has to provide a security surpassing the value of what is borrowed.
- b) Each person involved in a conflict for not redeeming what has been decided by the *adat* council must put the security of higher value at the disposal of the *adat* council.
- c) If those aforementioned in paragraphs a and b does not redeem what was borrowed in accordance with the schedule instructed, the aforementioned security will not be returned.

## Chapter XVI on the sale of goods, livestock or land under communal rights (*jual beli hak umum dalam bentuk barang, ternak, tanah*).

### Article One

#### *Sale under communal rights*

- a) A person selling or buying under communal rights without the knowledge/ consent of the community will be fined a third of the value of the goods, livestock or land after which the communal rights are restored.
- b) Every person who sells or buys goods, livestock or land must obtain a proof of sale from the village *adat* council/village head signed by at least one witness.

### Article two

#### *Sale of land*

- a) Each person selling a plot of land must obtain a proof of sale from the village head of which the village *adat* head must be informed, which must clearly state the borders and which must be agreed to by the paramount *adat* head of Krayan Hilir.
- b) Any sale of goods, livestock or land without a proof of sale is not considered legal.

## Chapter XVIII on renting (*penyewaan*)

### Article One

#### Renting under communal rights<sup>2</sup>

- a) If someone rents goods, livestock or land under communal rights community consent and written proof of agreement is required.
- b) The lessee is responsible for damage to the goods, livestock or land that is let.
- c) If the lessee does not observe the conditions written down in the agreement, the lessee will have to pay according to conditions that will be set in a meeting and the lessee's permit will be revoked.

## Chapter XIX on inheritance (*hak waris*)

### Article One

#### Division of inherited goods

- a) The person holding the first right of inheritance from parents/family is the oldest son/daughter of a family.
- b) The division of inheritance rights for the second son/daughter and so on is decided by the parents and the oldest son/daughter who has the first inheritance rights.

### Article Two

#### Division of an inheritance of land/rice fields from parents/family

- a) Remaining inheritance is equally divided among the children by the oldest child.
- b) The house is inherited by the child that took care of the father upon his decease.

### Article Three

#### Division of an inheritance of land/rice fields from parents/family

- a) See chapter XIX article 2a on the *adat* law.
- b) If one among the relatives causes a conflict to occur over the shared inheritance rights he/she is fined a third of the value of the goods/livestock/land that is the subject of the conflict and one pig of seven *kilan*. The right of inheritance over these goods is reverted back to the one in charge of the division of the inheritance.

### Article Four

#### Inheritance rights of other civilians to land

- a) Inheritance rights to land of the clan cannot be regulated by other people/another clan.
- b) Inheritance rights to land of the clan can be alienated because:
  - 1) It is bought.
  - 2) It is a place of disaster where people were wounded or died, if the community agrees to the alienation.
- c) Regarding the *adat* law of chapter XIX, article four, paragraphs a and b: each case is judged separately.
- d) Each person disturbing the rights of a person/clan as meant by the *adat* law of chapter XIX, article four, paragraphs a and b will be fined to the monetary value of a third of the aforementioned land as well as one pig of seven *kilan*. The aforementioned land will be returned to the entitled heir.

## Chapter XXI Accidents/disasters (*kecelakaan/musibah*)

### Article four

- a) Anyone intentionally burning public/private fields is fined one third of the monetary value of the burnt field and one pig of six *kilan*.
- b) Anyone accidentally burning public/private fields is fined one fourth of the monetary value of the burnt field and a pig of five *kilan*.
- c) If someone accidentally or intentionally causes the burning of rice barns, houses, graves and plantations as well as their fruits he must pay in accordance with the value of damage he caused as well as one pig of six *kilan*.

## Chapter XXIII on production land (*tanah garapan*)

### Article One

#### Public Production Land

- a) Public production land refers to an area which is used in unison by the community to meet common interests. It is managed by the village *adat* council, known to the village head and handed over by the paramount *adat* head of Krayan Hilir.
- b) If public production land is used by a corporation, a private limited company or a private company the investor must obey the agreements and condi-

<sup>2</sup> Letting under private rights refers to the same three paragraphs.

tions posed by the community owning the land. See chapter XI article 1 paragraph c and d of this book.<sup>3</sup>

- c) Production forest located on land used for daily needs is managed by the village *adat* council, made known to the village head and confirmed by the paramount *adat* head of Krayan in accordance with the *adat* law in force.

## Article Two

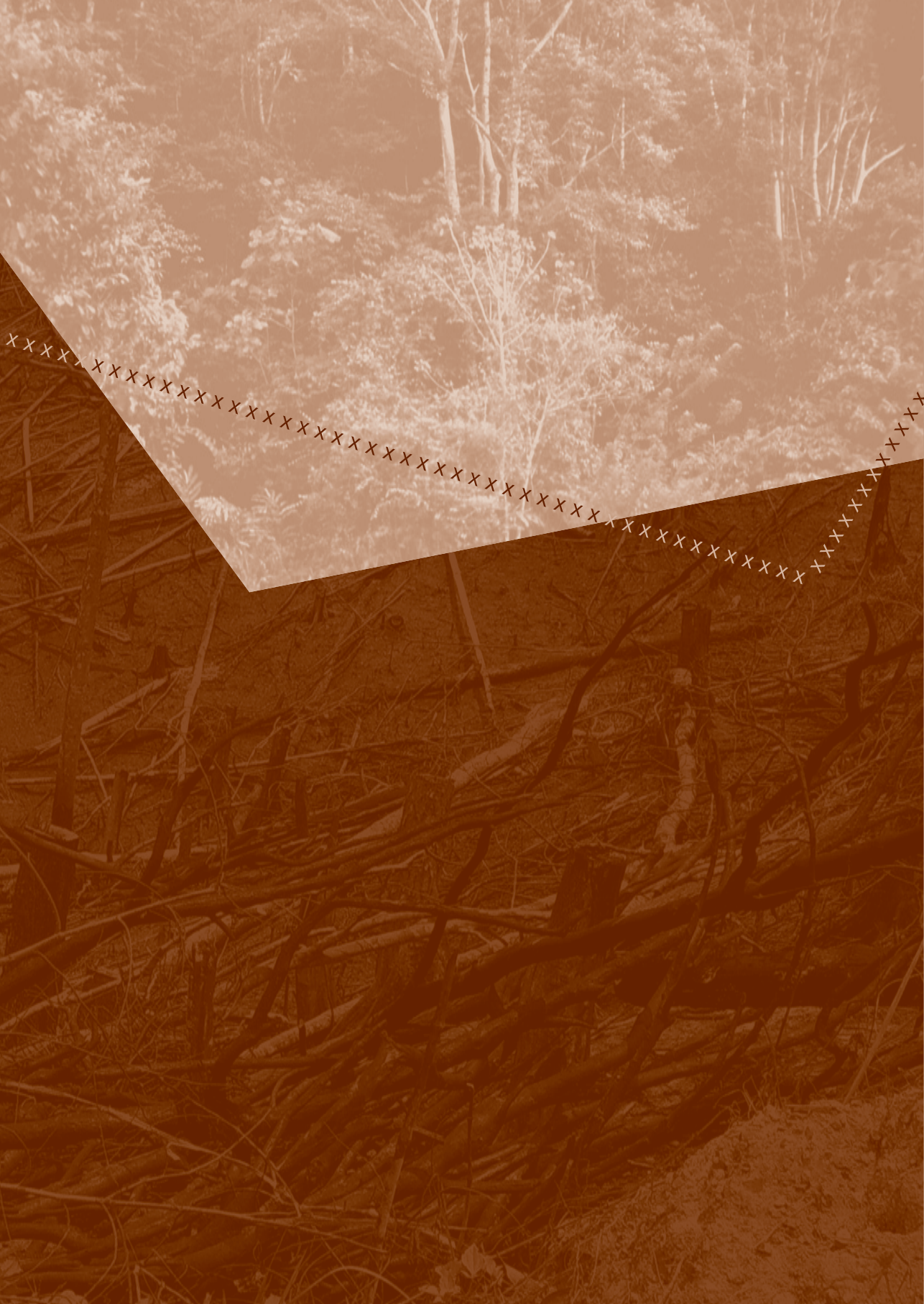
### *Private/family production land*

- a) If somebody undertakes activities which interfere with other people's rights to production land or forest the aforementioned person will be fined one pig of six *kilan*. The profit taken from the forest or land must be returned to the owner of the plot.
- b) An *adat* regulation determining the size of plots close to peoples' rice fields at a location on in the *adat* area of Krayan Hilir shall be determined by the village/location *adat* council and the decision will be made known to the village head and confirmed by the paramount *adat* head of Krayan Hilir.

<sup>3</sup> Chapter XI is on deceit. Paragraphs c and d state: c) if a corporation, a private limited company, a private company or investor deploys activities in the territory of the *adat* community of Krayan Hilir in a deceitful manner 50 percent of the actual value of the aforementioned corporation, private limited company, private company or investor is demanded after which the corporation, private limited company, private company or investor must cease its activities.

d) If a corporation deploys activities outside of the borders agreed to the corporation, private limited company, private company or investor will be discontinued by the *adat* authorities.





One thing I had intended not to do while conducting research in Paser was to come up with an ‘adatrechtsbundel’ (adat law book) in the style of Van Vollenhoven and his successors. First, and most importantly, because my research was not concerned with determining the validity of land claims according to local adat but with the argumentation and result of such claims and second because my own conclusions regarding the nature of adat made such an undertaking a futile exercise.

Yet the (in)existence of valid adat in Paser was closely connected to the concept of adat law: maintaining that adat had the binding and directing qualities of a legal system and, because of this, a legal system’s uniformity and objectivity in regarding its clients. A supposition which, as may have become clear in chapter 2, I disagree with.

Finding the adat of Paser appeared as a difficult exercise because there were some twelve Paser dialects and main sub-groups. Could all of these be assumed to adhere to the same adat rules even though their social and cultural histories differed considerably? I believed they could not. Upon making the acquaintance of the PBA’s entero I encountered an individual who claimed not only to be the supreme adat authority of all the Orang Paser, but to be the most knowledgeable person regarding the content of Paser adat rules as well. I would have been ready to ignore the actual validity of these claims and focus on their meaning to the PBA’s image and claim to authority when I was shown the first draft of the entero’s book on Paserse adat law. This was too much of a temptation to a student of Van Vollenhoven and Ter Haar: provided with such an opportunity I very much intended to include a check on the universal validity of Paserese adat concepts in my research.

The PBA’s entero was all in favour of this exercise, notwithstanding that I would go to the Gunung Lumut area where he had not conducted any research and he was not, as it turned out, regarded in a favourable light. I wanted to make the exercise a relevant one for my research and hence decided to focus on adat concepts relating to land tenure. The entero had not written a chapter on those as yet, but I requested him to provide me with a number of concepts he believed to be uniformly valid and understood throughout Paser.

I submitted this list to the adat leaders of the four Gunung Lumut communities where I conducted fieldwork -Mului, Rantau Layung, Belimbing and Kepala Telake- and entered the adat leaders’ responses in a table. These responses appeared to indicate the existence of a variety of Paserese adat, albeit with frequent overlaps and numerous similarities. The PBA’s entero had an explanation for this: the concepts he had given me were in an ancient Paserese dialect resembling the Paser Pematam dialect generally spoken in Tanah Grogot and its surroundings. Nowadays this ancient dialect was only used as a ‘legal language’ (bahasa hukum) by a select group of knowledgeable Paserese adat leaders known as keteron. The



entero suggested that not all adat leaders in remote Gunung Lumut, notably the younger ones, were capable of speaking this dialect. Hence, he felt, the diverse answers I received. The varieties on the concepts he had listed for me were just local names for keteron principles.

Sceptical of this explanation I asked the Gunung Lumut adat leaders whether they had ever heard of keteron. They all had, and they all confirmed it to be an ancient Paserese dialect only used to discuss matters of general adat involving two or more communities. The young men who were the adat leaders of Mului and Kepala Telake readily admitted to not having any knowledge of keteron, but the adat leaders of Rantau Layung and Belimbing who were more advanced in age agreed to its existence and validity, although they as well maintained to possess only little knowledge of it.

The data presented in this appendix is too limited to prove or disprove the existence of a universal Paserese adat and a valid keteron. What it does show is the diversity in interpretations and (dis)similarities in concepts among four relatively near communities. Should these data have been applied to prove or disprove the existence of a living universal adat system throughout Paser such as for hak ulayat (see chapter 10) sceptics might have no choice but to conclude its inexistence, although the rich and consistent answers by the adat leaders could offer different conclusions for local situations.

It will have become clear in preceding chapters (notably chapter 5) that I believe that at the time of the research local adat systems were of major importance in determining land access in Gunung Lumut. The data in the chart might also suggest the existence of a shared base of these adat systems, but one wonders whether this has a historical ground or stems from similar needs.

The existence of an entero as supreme adat authority was considered with surprise and disbelief in Gunung Lumut. None among my respondents had ever heard of such a position in the present or in the past. Yet, as one old man remarked, it could well be that the Paserese in the coastal plain used to have such an authority. It was rare for coastal authorities to have their influence reaching into the mountains.

Adat land concepts in Paser: a comparison of definitions given by the leader of the PBA adat NGO and the adat leaders of the Gunung Lumut villages of Mului, Rantau Layung, Kepala Telake and Belimbing.					
Adat (keteron) term	PBA definition	Mului	Rantau Layung	Belimbing	Kepala Telake <sup>4</sup>
Category I: Rights and properties in the forest.					
Bombak	Newly planted cuttings or germinated fruits planted in a communal area, usually a forest, but subject to private rights. Planted in cleared ground and reported to the community. The typification remains used for one to two years.	Known as boak in Mului: the PBA definition is correct, but should include young shoots on fields and in gardens as well.	Not just newly planted shoots: they have to be planted on land which before had already been used, for instance as a rice field, and to someone maintains a claim by planting these shoots. It concerns the land; the shoots are just a sign that it is claimed.	The concept exists here as well, but is simply known by the Indonesian lading kemarin (location of an old garden). Planting young shoots is indeed a sign of continued rights.	Not known.
Belakoh	Young tree or bush, subject to private rights but located in a communal area. The typification remains used for three to ten years, depending on the size and the type of growth.	The same as in the PBA definition.	Blako is land which is going to be planted for a third time. Saying that it refers to young growth is possible as it would refer to a similar period of ownership but it is stretching the definition.	Blako is an area which was used as a rice field about two years previous. There may be new crops growing if continued rights were claimed.	Not known.

<sup>4</sup> Kepala Telake's adat leader was a young man newly chosen for the task but lacking in adat knowledge. During our discussion of the concepts he tended to agree to all the definitions of the PBA before admitting, halfway through, that he had no idea what they meant. I hence decided to exclude his affirmative answers.

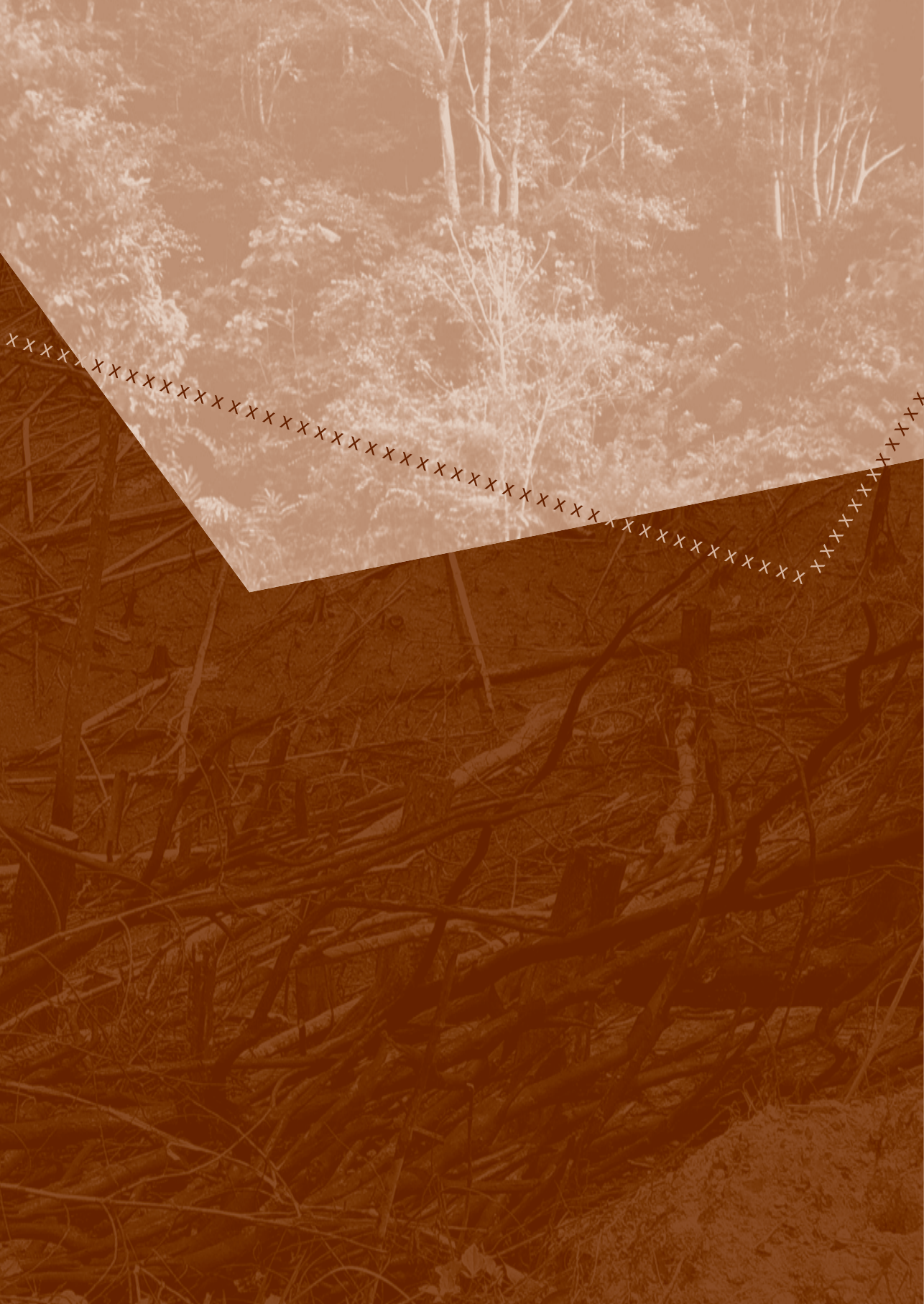
Lati-letie	A fully grown tree or bush with branches and bearing fruit. The typification can be used almost indefinitely and is usually only changed in relation to the context, for instance as inherited property.	The PBA definition is basically correct, but in Mului lati-letie specifically refers to tall, old trees. In addition there is alas lakn, which generally means 'old forest' and refers to similar rights as lati-letie.	Lati-letie is young forest and does not refer to ownership rights of old trees. Ownership rights to old trees are known as alas alen.	The PBA definition is correct, but lati-letie is just called lati in Blimbing.	Not known.
Ongkoh	A right to good which exist spread over an area, such as rattan creepers.	The word onkoh is unknown, but the concept is called bebewet of bebye in Mului.	Ongkoh is a rattan garden, so the PBA definition is correct.	Ongkoh refers to a rattan garden. A rattan garden which is harvested is called sipun buah.	Not known.
Category II: Rights to inherited land and goods upon it.					
Lepupui	Inheritance rights to land or crops by an individual or a group. It also connotes a general name for the inherited goods.	Called lepupoi in Mului, the PBA definition is correct but it must be emphasized that the term equals inheritance rights: nothing else.	The word lepupui is unknown, but the concept is called penoyak in Rantau Layung.	The word lepupui is not known, but the concept exists as titis in Blimbing.	Not known.
Tulei	Land cleared and planted by an individual or group of individuals. Descendants may later claim the land as kemarang.	Tulei is unknown. The concept is simply called hak (right).	The word tulei is unknown, but the concept is called umo buyo in Rantau Layung.	The word tulei is not known, but the concept exists as awa in Blimbing.	Not known.

Kemarang	Plants or trees, forest land or cleared land in a forest in a communal area claimed as private heritage by the descendants of an individual or group of individuals. For instance gardens, honey trees or rice fields.	Unknown. The concept does exist but is known as pengkeo.	Kemarang indeed refers to such claims, but it indicates that the claims were not honoured.	The same as the PBA definition.	Not known.
Bloo	Land inherited by a group of individuals, but divided by them into individual plots.	Does not exist in Mului.	The term is understood, but never used as such in Rantau Layung. Here people refer to nkeye belo, which means 'from those who have died'. More modern is marhum belo.	Never heard of Bloo, in Blimbing refer to this process as 'kapling' (Indonesian term after the Dutch 'verkaveling')	Not known.
Bwea	Land owned by an individual or group of people located at a long distance from their village. Only older people know about it because one must be very well versed in local adat to know it.	Does not exist in Mului.	Does exist, but not as a right. More as a memory of where ancestors once lived.	The word is not known. The concept is referred to as 'peringatan orang tua'. (Indonesian) Not a right, a way of remembering the ancestral history.	Not known.

Category III: Rights derived from communal or individual land ownership.					
Rumbu-rumbu	All the land of the community.	Does not exist in Mului. Just 'wilayah', (Indonesian) which is the same in Paserese.	Never heard of it. Meant must be ilayat.	Never heard of it, In Belimbing the term is (Indonesian) wilayah adat.	Not known.
Berut	Materials below the surface of the earth in a certain area. For instance coal or gold.	Does exist, but is known as jemrut.	Does exist, but only as a right to materials that come to the surface by themselves (e.g. gold, tree roots, and stones). There are no individual rights to what might or might not be below the surface.	The PBA definition is valid in Belimbing as well, although it does not necessarily pertain to valuable materials if they are found in communal adat land.	Not known.
Jinyak Darah	Immersed land which becomes available when the water subsides. Stones, sand, gold, etc. can be collected at such times.	Does not exist in Mului because it is located in the mountains.	Does not exist in Rantau Layung because it is located in the mountains.	Lots of it in lowland Belimbing, but simply called (Indonesian) tanah berlumpur.	Not known.
Ambur Buren	Permanently immersed land from which goods such as stones, sand or shellfish are easily obtained. For instance shallow sea close to the beach or the floor of a mangrove forest.	Does not exist in Mului.	Is the same in Rantau Layung, it refers to property rights to materials in the river and in creeks.	Is the same in Belimbing.	Not known.

Lung-Lungan	Muddy swamp land which can sometimes be used as rice field but otherwise is not usable for anything.	Does exist, but is known as payo.	Does exist, but is known as kalung.	Is the same in Belimbing.	Not known.
Category IV: Claims in which either the claimed land or the claimed right is faulty.					
Neku	A claim which is made wrongfully and defined as such. Defining a claim as neku is stating its invalidity.	Can be done in Mului as well, but is known as ngau or ugoh.	Is the same in Rantau Layung.	The word is not known in Belimbing.	Not known.
Kabo	Land which once was cultivated but has been left since. If it has been cultivated for an extensive period of time the former cultivator can claim rights to it even after years of disuse.	Does not exist in Mului.	Kabo refers to dry, infertile land which cannot be cultivated. What the PBA definition refers to is called tuko.	The word kabo is not used in Belimbing. The concept is, in Indonesian. There is a local word, but the adat leader cannot remember it.	Not known.
Orof	Land on which all crops die: infertile land.	In Mului orof refers to land which cannot be used immediately. For instance a field where large timbers lie that must moulder away or be reduced in some other manner.	In Rantau Layung dry, infertile land is known as orok. Orof does not exist.	The word is not known in Belimbing.	Not known.





# Appendix IV

## Tasks of district government public administration division (as set out in article 19 of district regulation number 10 of 1989 of the district of Muara Enim, South Sumatra)

The sub-division of public administration has as its task:

- a) To assist the head of the division of general government in carrying out his tasks.
- b) Collecting and studying legislative regulations, the policies of technical guidelines and technical instructions as well as other materials relating to its field of tasks that may serve as guidelines and fundamentals to its work.
- c) Search, bring together and systematically process the collection of data and information related to its field of tasks.
- d) Constructing a work program within its field of tasks and observe its implementation.
- e) Prepare data and information in its capacity of constructing policies, technical guidelines and instructions within the field of public administration.
- f) Carrying out an inventory of the problems within its field of tasks.
- g) Preparing data and information with the goal of solving problems in the field of public administration.
- h) Preparing data and information needed in carrying out its tasks in the field of public administration.
- i) Establishing working relations with other divisions in relation to the goal of smoothening the carrying out of public administration tasks.
- j) Search, bring together and systematically process the collection of data and information related to the execution of governance in the sub-districts.
- k) Preparing all data and information needed as part of the candidacy, recommendation, appointment and discharge of the district head, the district head's assistants, the district's secretariat, the head of the secretariat and the district parliament, the mayor, the city secretary and the members of the regional police.
- l) Preparing data and information needed to establish, remove, or alter the border and name of a neighbourhood/village, sub-district and the name of a district's capital.
- m) Preparing data and information as material for the composition of policies and technical guidelines regarding the execution of regional autonomy as a task of assistance.
- n) Preparing data and information related to the execution of governance in the sub-districts.



- o) Preparing data and information required for general elections.
- p) Executing an evaluation of the implementation of the tasks of the sub-division of public administration.
- q) Establishing the preparation of reports on all the outcomes of implementations of tasks and activities in the field of public governance.
- r) Implementing official tasks given by the head of the division of general government in accordance with its field of tasks.
- s) Propose suggestions and opinions to the head of government regarding measures or actions which he should take considering his tasks.

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